FEDERAL RESERVE BOARD AND TREASURY DEPARTMENT RULE PROPOSAL

HEARING

BEFORE THE

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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FEDERAL RESERVE BOARD AND TREASURY DEPARTMENT RULE PROPOSAL

WEDNESDAY, MAY 2, 2001

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC.

The subcommittee met, pursuant to call, at 9:39 a.m., in room 2128, Rayburn House Office Building, Hon. Spencer Bachus, [chairman of the subcommittee], presiding.

Present: Chairman Bachus; Representatives Oxley, Weldon, Roukema, Baker, Castle, LaFalce, Royce, Lucas, Barr, Kelly, Riley, Toomey, Cantor, Grucci, Hart, Capito, Tiberi, Waters, C. Maloney of New York, Watt, Bentsen, Sherman, Sandlin, Moore, Gonzalez, Kanjorski, Hooley, Carson, Lee, Hinojosa, Lucas, Shows and Crowley.

Chairman BACHUS. The hearing will come to order. This is the Subcommittee on Financial Institutions and Consumer Credit. Without objection, Ms. Velázquez will be deemed to be a Member of the subcommittee to rank immediately after Mr. Kanjorski for this hearing and subsequent hearings until her election is ratified by the full committee. And without objection, it is so ordered.

The first order of business is opening statements. Without objection, all Members' opening statements will be made a part of the record. At this time, I'll recognize myself for an opening statement.

The subcommittee meets today to continue the important work of overseeing implementation of the historic Gramm-Leach-Bliley financial modernization legislation enacted during the last Congress.

Last month, in collaboration with the Capital Markets Subcommittee, we reviewed rules promulgated by the Federal financial regulators governing merchant banking operations authorized by Gramm-Leach-Bliley.

This morning, we will consider a recent proposal by the Federal Reserve Board and the Treasury to permit financial holding companies and financial subsidiaries of national banks to offer real estate brokerage and real estate management services.

Title I of Gramm-Leach-Bliley allows financial holding companies and banks through financial subsidiaries to engage in a broad range of activities that are considered, quote, "financial in nature", end quote, or incidental or complementary to such financial activities. Among those financial activities specifically enumerated in the statue are banking, insurance and securities.

Title I also authorizes the Federal Reserve and the Treasury Department to define additional activities that they deem to be financial in nature or incidental to such activities and therefore permissible for financial holding companies and financial subsidiaries. And in that regard, we mention changes in the marketplace or changes in the delivery of financial services.

On January 3 of this year, the Federal Reserve and the Treasury published in the *Federal Register* a proposed rule that would add real estate brokerage and real estate management to the list of activities considered financial in nature or incidental to financial activity.

The proposal established a March 2nd, 2001 deadline for public comment. This proposal in no way changes the prohibition in Gramm-Leach-Bliley against banks or bank holding companies making real estate investments or being involved in real estate development. So we don't need to confuse those two activities. We're dealing here with brokerage.

Out of a belief that 2 months was simply not enough time for considered review of a proposal with potentially far-reaching consequences for consumers and providers of real estate services, I wrote to the regulators on February 1 urging them to extend the period for public comment.

On February 21, the Federal Reserve and the Treasury announced a 2-month extension of the comment period until May 1. With the expiration of the public comment period yesterday, the regulators must now begin the laborious task of reviewing and analyzing what I have been told has been a heavy volume of written comments to determine how to proceed with their proposal.

My hope is that by holding today's hearing, this subcommittee can play a constructive role in the deliberative process in which the regulators are currently engaged. In addition to giving Members an opportunity to make the regulators aware of Congressional concerns with the proposal, the hearing will provide a forum to a broad cross-section of affected industry and consumer groups, some of whom strongly support the proposed rule and others which are just as adamantly opposed to it.

My own reservations about the proposed rule are twofold. First I believe the wholesale entry of banks into the real estate business, while not in and of itself undermining safety and soundness, may serve to erode the long-standing separation between banking and commerce that Congress most recently reaffirmed in Gramm-Leach-Bliley.

Second, I have concerns about whether the statutory criteria that are supposed to guide the regulators' determination of what activities are financial in nature or incidental to such activities have been properly applied in this instance.

And I think part of our questioning today will be a determination about what is financial, what is commercial, and what we do when there's a mix of those two.

I recognize, however, that there are strong views on both sides of the issue. Legitimate arguments can be made for permitting banks to offer real estate-related services. Certainly the fact that some depository institutions, including federally-chartered credit unions and thrifts, as well as State-chartered banks in a number of jurisdictions, are authorized to engage in real estate activities while others are legally barred from doing so raises issues of competitive equity that should be addressed, must be addressed.

In this connection, I would say that if we continue down the road we're going, State charters look better and better, national charters have more and more disadvantages, and we could find ourselves with a national banking system that is inadequate.

Before recognizing the Ranking Member for an opening statement, I want to welcome our witnesses to today's hearing and remind both them and the Members that because another hearing is scheduled for 2 o'clock in this room, we're going to try to strictly go by the 5-minute rule on oral testimony and on Members' questioning.

Finally, let me conclude by saying both the banking industry and the real estate industry have served us well, and we need to keep that in mind as we conduct this hearing and try to fashion our concerns in an effort to continue their good service to consumers.

Ms. Waters, you are recognized.

[The prepared statement of Hon. Spencer Bachus can be found on page 56 in the appendix.]

Ms. WATERS. Thank you very much, Chairman Bachus, for holding this hearing. I look forward to hearing the testimony of the witnesses. And in the interest of time, I will keep my remarks to a minimum.

As the Ranking Member of the Financial Institutions Subcommittee, I believe we have a duty to oversee the regulations' implementing provisions of the financial modernization legislation that became law last Congress.

I also believe that it is important for us to monitor the expansion of banking activities in general to ensure that the regulations are appropriate to carry out the intent of Gramm-Leach-Bliley Act, and that the expansion of these activities falls within the purview of the Congressional intent.

We are here today to discuss the proposed rule that would permit financial institutions to engage in real estate management and brokerage. These activities would be deemed financial in nature under the Gramm-Leach-Bliley Act.

I have to say that during the many times that various financial modernization proposals were considered over the last decade, I've never advocated for the mixing of banking and commerce.

It is interesting that on this issue both Congressman Bachus and I have signed a letter expressing strong concerns with the proposed rule. I've also sent a similar letter in which I was joined by a number of my colleagues from California allowing banks into the real estate business would be a true breach of the division between banking and commerce.

During consideration of financial modernization, we considered this issue, and Congress decided to maintain the separation. We decided the interests of consumers would not be served by allowing Microsoft-NationsBank-Gap conglomerate to exist. We certainly did not want to model our banking policy after the Japanese system, which serves as an example to all of what can happen when the separation between banking and commerce is breached.

I am very concerned that the Fed and Treasury would be embarking on a slippery slope if real estate brokerage activity is considered a financial activity. Where would it end? Would appliances, cars, and anything purchased with a credit card be deemed financial in nature?

With that in mind, I look forward to hearing the views of the witnesses, and I thank you in advance for your testimony. I yield back the balance of my time.

Chairman BACHUS. Thank you.

At this time, I recognize the Chairman of the Full Committee, the gentleman from Ohio.

Mr. OXLEY. Thank you, Mr. Chairman. And good morning and welcome to Governor Meyer and Under Secretary Hammond and our other witnesses.

As Chairman Bachus indicated in his statement, the Fed and the Treasury have acted deliberately and thoroughly in their handling of this proposal, and I commend Chairman Bachus for holding this hearing and giving this subcommittee an opportunity for the Fed and the Treasury to discuss further the issues raised in their proposal.

This issue, like so many others, must be viewed in the context of the Gramm-Leach-Bliley debates that have led to this hearing. These debates, while contentious, resulted in a law that passed Congress by an overwhelming margin and with strong bipartisan support.

As I consider this proposal, I ask myself two basic questions. First, is it consistent with the Gramm-Leach-Bliley Act? And second, does it promote fair competition within the financial services industry? Generally corporations may engage in any lawful activity. However, financial holding companies and financial affiliates of national banks may engage only in activities authorized under the Gramm-Leach-Bliley Act.

GLB significantly expands the activities of financial holding companies beyond the activities permissible at that time for bank holding companies. When we wrote the list of activities that are financial in nature into the statute, we tried to incorporate all existing activities of the banking, securities and insurance industries without authorizing the complete mixing of banking and commerce or indeed try to provide a definitive list.

At the same time, we recognize there might be activities we failed to include. To address this possibility and the need for the industry to evolve over time, we created a specific process to allow the Fed and the Treasury to periodically update the list of activities that are financial in nature or incidental to such activities.

This proposal represents the first significant application of the process we created. Striking a balance between the separation of banking and commerce and the promotion of competition is never an easy task. For years I watched the insurance, securities and banking industries battle each other to protect themselves from competition. Those efforts continue to this day, most recently by opposition to the repeal of the 70-year-old ban on the payment of interest on business checking accounts.

But there continues to be broad agreement in Congress that our financial services laws must be updated on a regular basis to account for changes in the marketplace and to foster full and fair competition.

It takes courage for an industry to adapt to a new regulatory structure, particularly when that structure creates many new competitive opportunities. Competition, however, ultimately makes the industry stronger, because it forces the industry to meet new challenges and to provide more and better services for consumers. I have seen the positive impact of the competition between these former adversaries has had for both consumers and the overall safety and soundness of the financial services industry.

At the same time, competition must be fair, with adequate consumer protections against tying or other coercive practices. I agree with the Treasury Department that in moving forward on this proposal, the regulators must work closely together to ensure that this and other rulemaking under the financial-in-nature authority are consistent with the criteria and legal process Congress prescribed and the public interest.

And I might add, Mr. Chairman, that indeed the legislative record will have a significant impact I trust on the decisionmaking process by Treasury and the Fed.

I have full confidence that the Fed and Treasury will discharge the duties entrusted to them by Congress in the Gramm-Leach-Bliley Act and look forward to a spirited discussion of their proposal this morning.

Mr. Chairman, thank you. And I yield back the balance of my time.

[The prepared statement of Hon. Michael G. Oxley can be found on page 61 in the appendix.]

Chairman BACHUS. Thank you.

Other Members of the subcommittee will now be recognized for 3 minutes for opening statements. I have Mr. Sherman, Mr. Weldon, Mrs. Roukema and Ms. Kelly. If there are other Members who wish to making opening statements, if you'd advise us. And at this time, I'll go to Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman. I'd like to pick up on some of the earlier opening statements. My colleague from Los Angeles points out that we shouldn't call a transaction a financial transaction simply because it's financed with a credit card. When I bought this tie, I used a credit card. I didn't think I was engaging in a financial transaction.

The Chairman of the full Committee correctly points out that we gave to the regulatory agencies the right to update the list as changes occurred. And yet this proposal was made less than a year after Gramm-Leach-Bliley was enacted into law and does not seem to arise from any change between late 1999 and late 2000 in the nature of real estate or banking, but rather a desire to amend and to add to Gramm-Leach-Bliley that which Congress did not put there.

I do want to thank you, Mr. Chairman, for holding these hearings. You and I and many others asked Chairman Greenspan and the Secretary of the Treasury, Mr. O'Neill, to delay these regulatory proposals until May. I would like to put Gramm-Leach-Bliley Section 103 Paragraph 4, into the record here.

[The information referred to can be found on page 175 in the appendix.]

I don't have time to read it. But it lists all of the areas that exemplify financial transactions. And one thing is clear from looking at that list. It involves intangible property, choses in action, investments, situations where you get a certificate of deposit or an insurance policy, a piece of paper. The law is very clear, and I have to confess to being a lawyer. There's a difference between intangible property and real estate, which is the most real, the most tangible property.

And if we are going to say that real estate is to be put in the same category as intangible assets and what the old law called choses in action, then we really have gone to the Japanese system that my colleague from Los Angeles pointed out.

That may or may not be in good public policy, but it's not public policy that should be made by regulatory agencies. If we are going to dramatically expand Gramm-Leach-Bliley, it ought to be done here in this Committee, and there shouldn't be a end run around the authority of Congress where we are told that less than a year after we pass a bill it needs to be updated by putting something into it that many of us who supported the bill never intended. Thank you.

Chairman BACHUS. I thank the gentleman.

Mr. Weldon.

Mr. WELDON. Thank you, Mr. Chairman. I want to thank you for calling this hearing. I share some of the concerns you stated about this proposed rule. Unfortunately, I have another important hearing I have to go to.

I just wanted to share with the witnesses that I will be reviewing your testimonies and monitoring the actions taken by the Fed on this issue very closely. And I yield back.

Chairman BACHUS. Thank you.

Mr. Kanjorski.

Mr. KANJORSKI. Thank you, Mr. Chairman. In the interest of time, I have submitted my statement for the record.

I want to support my colleagues who have indicated to the regulators that it was not the intention of Congress, or at least in our interpretation, to break down the firewalls between banking and commerce. Some of us were very specific about maintaining those firewalls, and we interpret this regulation as doing exactly the opposite.

It is unfortunate that this is the first regulatory interpretation of Gramm-Leach-Bliley that attempts to make this unusual expansion. I urge the regulators to listen carefully to the 40,000 critics of their regulatory rule, particularly the critics on this subcommittee and this Congress.

It would be unfortunate if we have to modify or further examine this law, because of regulatory interpretations expanding what authority was intended and, in fact, granted by the Congress. Thank you.

[The prepared statement of Hon. Paul Kanjorski can be found on page 59 in the appendix.]

Chairman BACHUS. Thank you, Mr. Kanjorski.

Mrs. Roukema.

Mrs. ROUKEMA. Thank you, Mr. Chairman. And again, in the interest of time, I would ask that my full statement be included in the record.

But I do want to specifically associate myself with the issues you raised, Mr. Chairman, in your opening statement, and very specifically, the concerns regarding safety and soundness in the separation of finances and commercial activity.

And as the Chair of the Subcommittee on Housing, we will be looking at the Real Estate Settlement Procedures Act, the RESPA. And there are reforms that we are going to be looking at this year with respect to RESPA. But the implications here I think are specific, and we will be looking at that measure as well. And I thank the Chairman.

Chairman BACHUS. Thank you.

At this time, Ms. Kelly, unless there's a Member of the Minority. Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chairman. I will submit my statement for the record. I just want to say that in the Gramm-Leach-Bliley, when we gave the discretion to the Fed and Treasury to determine what kind of activities are financial in nature, I think some of us were a little surprised that this proposal to allow the financial subsidiaries of banks to engage in real estate activities came out in January.

I think the proposal raises a number of questions about how an activity is determined to be financial in nature and I think we have a number of questions—I certainly do—for the Fed and the Treasury about this proposal.

I thank you very much, and I look forward to the testimony.

[The prepared statement of Hon. Sue W. Kelly can be found on page xx in the appendix.]

Chairman BACHUS. Thank you. That concludes the opening statements of the Members. Am I correct?

At this time I will introduce the first panel. Laurence J. Meyer, Governor Meyer, Member of the Board of Governors, Federal Reserve System, and Under Secretary Donald V. Hammond, who is the Acting Under Secretary for Domestic Finance, Department of the Treasury.

We welcome you two gentlemen, and at this time, without objection, your written statements will be made a part of the record and you will each be recognized for a 5-minute summarization of your remarks. And at this time, Governor Meyer.

STATEMENT OF HON. LAURENCE J. MEYER, MEMBER, BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM

Mr. MEYER. Thank you. Chairman Bachus, Chairman Oxley, Congresswoman Waters and other Members of the subcommittee, thank you for the opportunity to testify on behalf of the Federal Reserve Board with respect to the joint invitation by the Board and the Secretary of the Treasury for public comment on whether real estate brokerage and real estate management are activities that are financial in nature or incidental to a financial activity, and hence permissible for financial holding companies and financial subsidiaries of national banks. The agencies published the request for comment on January 3, 2001. Because of the significant public interest in the proposal, we extended the public comment period through May 1, 2001.

The recently enacted Gramm-Leach-Bliley Act allows a financial holding company to engage in, and affiliate with companies engaged in a broad range of financial activities. The activities specifically authorized by statue include lending; insurance underwriting and agency; providing financial advice; securities brokerage; underwriting and dealing; and merchant banking activities.

In addition, the GLB Act permits financial holding companies to engage in other activities that the Board determines in consultation with the Secretary of the Treasury, to be "financial in nature or incidental to a financial activity." The GLB Act includes this flexibility as a result of Congress's recognition of the practical difficulties of comprehensively defining in legislation a complex concept like "financial activities" for a marketplace that is continuously evolving.

With the real estate and other recent proposals, the Board and the Treasury are exploring this new standard. The GLB Act establishes certain factors that the Board and Treasury must consider. But otherwise, it leaves to the agencies significant discretion and very little guidance regarding what is and what is not a financial activity.

The factors that the agencies must consider are very broad. For example, the agencies must consider whether the proposed activity is necessary or appropriate to allow a financial holding company to compete effectively with any company seeking to provide financial services in the United States, efficiently deliver financial information and services through the use of technological means, or offer customers any available or emerging technological means for using financial services. In addition, the agencies must consider changes or reasonably expected changes in the marketplace in which financial holding companies compete, as well as changes or reasonably expected changes in the technology for delivering financial services.

One thing that is clear is that Congress intended the "financial-in-nature" test to be broader than the previous test for authorizing new activities for bank holding companies under the Bank Holding Company Act. Before passage of the GLB Act, bank holding companies were permitted to engage only in activities that the Board determined were "closely related to banking." The closely related to banking test was tied to the activities of banks.

The GLB Act neither specifically authorizes nor specifically forbids financial holding companies or financial subsidiaries of national banks to engage in real estate brokerage and management activities.

Soon after the passage of the GLB Act, three trade associations asked the Board and the Treasury to determine that real estate brokerage activities are financial in nature and one asked the agencies to define real estate management activities as financial in nature.

The Board and Treasury responded to these requests by seeking public comment. We have found the public comment process to be a useful means of gathering information from experts, practitioners and analysts with an understanding of the relevant issues and activities. Our final rules often include significant modifications as a result of the comments we received on the proposed rules.

As I indicated earlier, the comment period on the proposal was open for approximately 120 days. The speakers on the next panel, which include members of the trade associations that represent various parts of the banking, real estate and housing industries, will detail their positions for and against the proposal. Their remarks will give you a good sense of the comments that we are receiving and reviewing.

These are difficult issues, and both sides feel very strongly about their position. While we do not relish being in the middle, we believe that a debate on these matters is the best way to allow the agencies to identify and sort through the issues and to reach an informed decision, and is precisely the type of the debate envisioned in the GLB Act.

Thank you.

[The prepared statement of Hon. Laurence J. Meyer can be found on page 64 in the appendix.]

Chairman BACHUS. Thank you.

At this time, Mr. Hammond.

STATEMENT OF HON. DONALD V. HAMMOND, ACTING UNDER SECRETARY FOR DOMESTIC FINANCE, DEPARTMENT OF THE TREASURY

Mr. HAMMOND. Thank you, Mr. Chairman. Chairman Bachus, Ms. Waters, and Members of the subcommittee, I appreciate the opportunity to appear today to discuss the Joint Federal Reserve-Treasury Rule Proposal on whether to permit financial holding companies and financial subsidiaries of national banks to engage in real estate brokerage and real estate management under the Gramm-Leach-Bliley Act.

The 4-month public comment period for this proposal ended yesterday. And based on the substantial number of comment letters that we have received, there clearly is wide public interest in this proposal. We received comments from several of the Members of this subcommittee and witnesses as well at today's hearing, and I note that the hearing transcript will be made part of our rulemaking record.

Because the rulemaking is pending, I will not be able to discuss the Treasury's views on substantive issues involved in making a final decision about the proposed rule. Instead, my remarks will briefly describe the process and factors we considered in making the proposal and where it stands today.

The Gramm-Leach-Bliley Act permits financial subsidiaries to engage in a broad range of specific activities as well as other activities the Treasury determines in consultation with the Federal Reserve Board to be financial in nature or incidental to a financial activity. We and the Board are working cooperatively in making these determinations as the Joint Proposal clearly demonstrates.

In making determinations, the Act requires us to take into account among other factors the Act's purposes, changes in the marketplace in which banks compete, changes in the technology for delivering financial services, and whether the activity is necessary or appropriate to allow a bank and its subsidiaries to compete effectively with any company seeking to provide financial services in the United States.

The current process started informally more than a year ago when the Treasury and the Board received requests from the American Bankers Association, the Financial Services Roundtable, and the New York Clearinghouse Association asking that we determine that real estate brokerage and real estate management activities are financial in nature or incidental to a financial activity.

In March of 2000, Treasury issued an interim final rule setting forth specific procedures for requesting determinations under the Act, and we invited the ABA and the Financial Services Roundtable to resubmit their requests to conform to these procedures.

The American Bankers Association did so in July, and a month later, Freemont National Bank submitted a request as well.

After due consideration of the requests and consultation with the Federal Reserve Board and its staff, in December we agreed with the Board to issue a Joint Notice of Proposed Rulemaking with a 60-day comment period. That proposal was published on January 3rd.

Because of wide public interest and requests for an extension, we jointly decided to extend the comment period another 60 days to give the public ample opportunity to consider the proposal and comment on it.

Since the comment period is now closed, we are beginning the comment review phase. We are in the process of reading and analyzing the comment letters, and we will give serious consideration to all the views expressed.

Mr. Chairman, let me highlight just a few points about the proposal itself. In assessing the requests we received, we concluded that a threshold case can be made that direct competition exists between real estate brokers and banking organizations. According to information provided by the Conference of State Banking Supervisors, 26 States appear to permit their State-chartered banks or subsidiaries to act as general real estate brokers.

In addition, banks and bank holding companies participate in most aspects of the typical real estate transaction other than brokerage.

Banks and bank holding companies also engage in a variety of activities that at first glance seem functionally and operationally similar to real estate brokerage, including finder activities and securities and insurance brokerage. Buyers and sellers of real estate increasingly may look to a single company to provide all their real estate-related needs.

The proposal also notes that existing Federal and State laws should operate to mitigate any potential adverse effects of combining banking and real estate brokerage.

In addition, because the proposed real estate brokerage services are activities conducted as agent with no principal risk involved, the proposed brokerage activity does not appear to present significant financial risks to banking organizations or their depository institution affiliates.

We expressed some doubts in the proposal as to whether all aspects of real estate management are financial in nature or incidental. For example, our proposal would preclude a financial subsidiary or financial holding company that provides real estate management services from itself repairing or maintaining the required real estate.

In conclusion, Mr. Chairman, we intend to carefully consider the issues raised by all the commentors, including the views expressed at this morning's hearing. As we move forward, the Treasury will work closely with the Federal Reserve to ensure that this and other rulemakings under the financial-in-nature authority are consistent with the criteria Congress prescribed, the legal process and the public interest.

Thank you very much. I'll be happy to answer any questions.

[The prepared statement of Hon. Donald V. Hammond can be found on page 74 in the appendix.]

Chairman BACHUS. Thank you.

Let me ask both panelists this question. Have you considered the consumer and the benefit to the consumer by this proposal and if any protections are going to be necessary as part of the proposal? Governor Meyer.

Mr. MEYER. Well, certainly we've considered the benefits of the consumer in the form that when there's increased competition for financial services——

Chairman BACHUS. Would you pull the mike a little closer?

Mr. MEYER. When there is increased competition for financial services, consumers typically benefit. That's one aspect.

Second, there is an evolving system where consumers often prefer to have one-stop shopping. And so there are synergies between activities. And that's another potential benefit that consumers might obtain if they were able to do real estate brokerage as well as all the other real estate-related transactions at banks, as they are allowed to do in some other places.

In terms of protections, of course there are a lot of protections that are already in place through State licensing laws and qualifications, as well as Federal anti-tying laws, and we have certainly taken those into consideration.

Chairman BACHUS. Have you come up with any concrete proposals on what protections may be necessary for the consumer other than what's already in the law?

Mr. MEYER. No. We haven't come up with any proposals of additional protections that we thought jointly would be necessary with this proposal.

Mr. HAMMOND. I think it's important to note as we look at the proposal that what we've put forward is a threshold test for public comment.

What we've done is we've ascertained, based on the requests received, that certain evidences of activity incidental to financial services are evident in real estate brokerage. What we haven't done is fully considered the entire record. That's what the public comment period is all about.

We have obviously looked at some of the provisions, such as anti-tying laws, other consumer protections, were factored in to meeting the threshold test. But as we are all aware, that this is a proposal and not a final rulemaking at this point in time.

Chairman BACHUS. What makes the sale of a house financial as opposed to commercial?

Mr. MEYER. That's what this whole process is all about. That's what we're trying to sort through. And it's very important, because this is our first attempt really to draw that line. So I can't fully answer that question, because that's what we have to sort out in finally reaching this decision.

But I would point out two considerations. One, sometimes we want to approach this from the standpoint of a philosophical dividing line. And one of the Members of the subcommittee noted that a financial asset is an intangible asset, and real estate is a tangible asset. That would be a philosophical drawing line.

Now you could have written that into the Gramm-Leach-Bliley Act and said it's very simple; that's what it is, period. But you didn't. You wrote a much more subtle, much more flexible, much more nuanced piece of legislation. And you told us to consider as well such aspects as the competitive nature of the financial services industry.

So in particular, and Mr. Chairman, your statement at the outset was very balanced, as we are trying to be with the proposal that is outstanding. And you yourself noted that we also have to take into consideration whether these activities are appropriate or necessary in order to allow banks to compete effectively in the financial services industries when other depository institutions have authority to do this, when other non-bank financial institutions have the opportunity to offer these services.

So both those competitive issues on the one hand, and the philosophical issues on the other, have to be weighed.

Chairman BACHUS. My final question is the broker often represents the seller as opposed to the buyer. In fact, they normally sign a form saying they're representing the seller. The bank at the same time is going to be representing the seller in getting the highest price they can get. But then they're hoping to represent the buyer in getting a loan for the buyer. So they're trying to get the buyer the best price, but they're trying to get the seller the most value.

Is there a conflict of interest or potential conflict of interest in that they are financing the arrangement for the buyer, but they are actually acting on behalf of the seller and trying to get the highest price? And it is to their advantage to actually get the very best value for——

Mr. MEYER. This is a very good example of issues on the other side that had been brought up that there might be some adverse consequences to consumers of allowing banks to offer real estate brokerage, and specifically these conflicts of interests. And those are some of the issues that we will have to take up as we consider this fully.

Chairman BACHUS. Mr. Hammond.

Mr. HAMMOND. I think that kind of conflict or apparent conflict is an interesting question as well, because you can also look at it from the standpoint of the financial institution being interested in the seller's interest and the buyer being able to obtain financing. So you run into the inherent question of do they in fact apply the appropriate standards in underwriting the loan as you go forward.

So it is not clear to me, as in many aspects of this proposal, there is a lot of gray area that needs to be carefully considered. That's why the comment period I think is so welcome in this regard.

Chairman BACHUS. There was a similar argument in Gramm-Leach-Bliley. I argued unsuccessfully that financial institutions shouldn't be allowed to write insurance, title insurance insuring their own portfolios. In fact, they were insuring themselves. I lost that argument. But I saw a conflict there.

At this time I recognize the gentlelady from California.

Ms. WATERS. Thank you very much.

Let me just start by asking, I understand that you have received somewhere between 40 and 45 thousand comments in opposition to the proposed change. What role does that play in the final decisions to move forward with this? I mean, how do you factor in the comments?

Mr. MEYER. Of course, the comments play a very important role. They help to identify the key arguments in favor and opposed. But on the other hand, we do not weigh the number of responses on either side. We weigh the substance of the responses.

But what this does indicate is that this is a very controversial proposal. We should very, very carefully deliberate on it, and we should think long and hard about how we proceed on it.

Ms. WATERS. As I look at your testimony, Mr. Hammond, Under Secretary, Treasury, Acting Under Secretary Donald Hammond, you correctly point out that in making determinations, the Gramm-Leach-Bliley Act requires you to take into account the Act's purposes, changes in the marketplace in which banks compete, and you kind of talked about the purposes. And you talked about the gray areas. And you talked a little bit about what you think was intended and the area that gives you the opportunity to move in.

What changes in the marketplace would be applicable to this consideration? Are there changes in the marketplace?

Mr. HAMMOND. We think that there has, in fact, been an evolution in the marketplace that raises some interesting questions over time as to the bundling of financial services, particularly with regard to real estate transactions.

As you look at the level playing field from a competitive standpoint, one can make an argument that financial institutions could be disadvantaged in certain circumstances vis-a-vis non-insured financial institutions by virtue of the ability to offer real estate brokerage services.

It was that bundling of services combined with the overall competitive landscape which brought us to the first threshold test, which was is this something worthy of putting out for public comment?

Ms. WATERS. What changes in technology?

Mr. HAMMOND. I think what you're seeing—our sense is that we are seeing a lot of internet-based financial shopping. We are seeing the capability to do one-stop shopping, which consumers have expressed interest in, certainly in certain environments, and the ability for institutions to enter that marketplace is somewhat dependent upon their ability to offer a full range of services.

Ms. WATERS. When you talk about one-stop shopping, do you have on the record—have you done hearings? Have you done something that places on the record this so-called preference for what you call one-stop shopping, or is this just kind of your basic feeling about it?

Mr. HAMMOND. That's a very good question. I think it reflects the nature of where we are in the process.

Ms. WATERS. Have you done something that would lead you to believe that the real estate industry does not have the ability to have the technology that would appeal to its clients or customers in some way that the banks would have?

Mr. HAMMOND. I'm sorry. I must have confused you in that I'm not talking about the inability for the real estate industry to take advantage of certain technology. What we're looking at based on the requests that we received was, is there a legitimate question about the ability of technology and the need to bundle financial services going forward to put people on a level playing field?

We are in the comment period at this point in time in the process. That is exactly the type of information we hope to get out of the comment period is those types of observations as to is this really in consumers' best interests? Is there a competitive inequality?

But based on the requests that we received, we felt that they met the threshold test for putting this issue out under the statute and seeking public comment on it.

Ms. WATERS. Lastly, and I thank you very much, Mr. Chairman, this is rather soon after the Act that you are moving with this consideration. Don't you think that it's too soon? And what caused you to move so rapidly to give consideration to this change?

Mr. MEYER. The timing of the proposal reflects requests that were made by three trade associations. So they made the request, and we appreciated that we had a difficult job ahead of us under Gramm-Leach-Bliley of defining what financial-in-nature is, setting those boundaries. And this looked like an appropriate opportunity for us to begin to work on those issues. And that's really what determined entirely the timing of it.

Ms. WATERS. Did you at any time consult any of the players on both sides of the Act about their feelings about moving at this time? And I know that you've gotten requests to extend the comment period. But did you consult or talk with anybody about whether or not this was too soon? Whether or not we should wait to hear from others on the issue before moving with this?

Mr. MEYER. To my knowledge, we didn't talk to Members of Congress about whether or not it was appropriate or not to move on requests that we got as to whether activities were financial or not. It seems to me that was our responsibility under the Act when we get these requests.

We either have to say, no, we're simply not prepared to fulfill our responsibilities under the law to determine whether or not this activity is financial, or we have to engage in a public comment period to try to sort out the issues.

Ms. WATERS. But then you know that if any of the Members here, and particularly any of the Members of the Majority party feel that there are areas that need to be clarified, need to be made clear, that a simple amendment passed perhaps without a hearing anywhere would clear it all up just like within minutes?

Mr. MEYER. Congressional intent is very important here. I completely agree that regulators should not overstep the boundaries of their authority. We tried to do an exhaustive search to try to see whether or not there was clear legislative intent.

There was nothing in the law that either expressly allowed or forbid it. And indeed, the law gave clear directions about how we were to respond and what standards we were to apply to requests. And that's really what we're trying to do here.

Ms. WATERS. Thank you, Mr. Chairman.

Chairman BACHUS. Mr. Baker.

Mr. BAKER. Thank you, Mr. Chairman. I really tried very hard to stay out of this, but I unfortunately cannot constrain myself any longer.

[Laughter.]

Mr. BAKER. I was a realtor. I was a homebuilder. I was president of a homebuilder's organization when I was rational before losing my mind and coming to this occupation.

My son is now a realtor. So I'm making all these confessions in advance of my statement, really no question. I think there's a simple solution, Governor Meyer. If you took the Fed's original merchant banking rules and applied them to the real estate business, everybody would go home happy. You simply couldn't do it at all. And I'm not clear where merchant banking rules are applicable to this set of issues.

But there is one legitimate concern I have as to an affiliation, not a subsidiary. I know that direct investment in real estate would be prohibited with the subsidiary structure. I'm not sure if there was an affiliation under the proposed rule with a real estate brokerage firm that chose to get into direct investment that it would not open up the holding company to exposure of risk of loss where those types of activities. That's just a general question. I don't know the answer to it. But I wanted to raise it, because I think that's something that does deserve legitimate evaluation.

However, in talking with most realtors, including my son, who was the first to call me about your proposed regulation, the criticism is that it's big versus little, not merchant banking, not commerce and finance. Most folks in the real estate business don't get into those discussions.

It's the "Bill Gates" syndrome. When we had it during Gramm-Leach-Bliley, it was my word that Bill Gates is going to own every bank in America. And that obviously has not transpired. But if it is big versus little, and we're worried about the aggregation of financial assets in a limited number of hands which would then preclude small operators from the marketplace, I would point to the real estate industry as a prime example.

There are ten large firms in this country which in aggregation were responsible for 800,000 transactions in 1999 at an aggregate sales volume of $200 billion. One firm was responsible for 362,000 transactions for an aggregate sales volume of $95 billion.

Now, if I were a realtor in Louisiana, I would be very worried because we didn't have $95 billion worth of sales in Louisiana last year and may not for the next decade, given what we've been through in the 1980's in the oil patch.

My point is, is if it's big versus little, we've already got that problem. Now if we throw that out the door and we want to talk about commerce and finance or banking and finance or commerce and banking or whatever the concern might be of a particular group, let's analyze what the real estate industry is doing today.

I have advertisements—I just got them off the internet this morning—of a couple of really nice firms. I do business with them. I think they're probably very professional. They have, you know, "push your button here and if you don't have time to look at houses, we'll e-mail you back with floor plans."

There's even a firm in Southern California that has a camera that goes in and does a 360 degree view of the neighborhood so you can stand at the front door, look down the street, and see what the neighbors look like, look inside the house. I mean, it's fabulous technology. All this is available today.

But, if you don't want to deal with all these other folks, like lawyers at closings, or insurance agents at the time of sale to insure the home, you know, all of that business, firms are doing all of that as a real estate brokerage operation. Full service. And we don't have the sales volumes on those insurance sales or those loan-closing transactions or the legal services fees being paid, but I would bet it's pretty significant.

I think I have discovered a public policy crisis. The breach has been made between the barrier between commerce and finance, and it's happening in the real estate market. Civilization is in peril.

Now I would merely point out that if we are going to wave the flag—and I'm a realtor, and I'm in real trouble back home with my realtors for this statement—and that's the principal reason driving this debate, and all of us being so antsy about it. They're doing it. If A can do it to B, B ought to be able to do it to A. If you don't like the threat, quit doing it yourself. That's the bottom line.

In talking to the small, independent realtors who do a few hundred thousand dollars or a few million dollars in business each year, they don't like the big boys doing this either, the big realtors that is. They are in jeopardy. And all the mergers and acquisitions we thought were going to happen as a result of Gramm-Leach-Bliley with financial institutions has happened between the big boys. We still have 8,500 banks, the bulk of which are small. They're not going to Bunkie, Louisiana and getting in the crop loan business. And the big realtors aren't going to come to Baton Rouge and gobble up all my small realtors.

A professional organization who delivers a professional service will continue to prosper and do quite well in a competitive environment.

Now I don't know how we got on all this banking and finance and commerce and finance and all of those concerns. That's not the debate. It's whether the big banks are going to come to our home towns and gobble up small realtors. If that is the issue, big realtors are going to gobble up small realtors. That's the more likely aggregation than anything else. And I am concerned about that.

I am very concerned about financial assets of the big people in this country, like the Wal-Marts, buying up the hardware stores, the linen store, the feed and seed store, and exporting the home town payroll to wherever that place is located. I think that's bad public policy. So I'm worried about big versus little.

I don't think the rule as proposed has that effect. But I have an open mind. Thank you.

Chairman BACHUS. Would you like to answer his question?

[Laughter.]

Mr. MEYER. I would point out that these are two issues that are relevant and that we have to factor in. One is what is the impact on the competition in this industry. And it can be fairly subtle in terms of what the impact is going to be.

And second, as you point out, we have to talk about competitiveness in the market for financial services. And that isn't just what other banks are doing. It's not just what other financial services firms are doing, but what real estate firms are doing as full service providers of both real estate brokerage, mortgage loans, and so forth.

Chairman BACHUS. Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I'm I guess a little confused about what the Fed and the Treasury's role here is. And let me see if I can clear that up before I get into any substantive questions.

Mr. Hammond, you indicated that you can't discuss the substantive considerations that will lead you to a final rule on this or to throw out the rule. That you had the authority to make the rule, which I don't argue with. The bankers' groups requested that you make this rule. And you found a threshold case to make the rule.

I guess I had always thought that when the Fed and the Treasury proposed a rule that they were advocating, there was somebody inside your body who advocated for the proposed rule. Is that or is that not the case here? Are we engaging in what would in effect be a rule promulgated for debate purposes to clarify the law, or are you all advocating this rule? I still don't know even after hearing your testimony and after hearing your responses to the questions that have gone so far.

Mr. HAMMOND. I think that's a very good question, because it gets to the heart——

Mr. WATT. Give me a very good answer, then.

[Laughter.]

Mr. HAMMOND. All right. I think it gets to the heart of the question of what we are confronting here. This is a very different type of rulemaking from my standpoint in that this is not a regulatory action in the traditional sense where a regulatory agency is looking at a practice and trying to determine whether or not it is appropriate within the construct of its broader mission, say, safety and soundness.

As I look at it, this is a rulemaking designed to interpret the statute. The statue granted certain authorities. It gave the gatekeeper responsibilities for those authorities to the Treasury and the Federal Reserve. A request came in——

Mr. WATT. But it sounds like you all have thrown a rock and you're hiding your hand now. And I guess the question I'm asking is, is there an advocate inside the Fed or are there advocates inside the Fed or the Department of the Treasury for this rule, or are you all just putting it out there because you think you have to do it in the context of the law?

Mr. HAMMOND. We think, at Treasury at least, we think it very clearly met a threshold standard, that the request came in, met enough of the statutory requirements to put it forward as a proposal.

I will hedge my comments to the extent that since the time the Treasury has put out the rulemaking, the Administration has changed. And so those that were incumbent upon making the initial decisions to put forward the proposed rulemaking, those positions are in the process of changing.

Mr. WATT. But the composition of the Fed really hasn't changed, and the Treasury really hadn't changed except for I guess the leadership. You're saying that the change in Administration is likely to change your position on this? Why didn't you withdraw it and start over again after you got a feel for what was going to happen here?

Mr. HAMMOND. I was trying to answer your question about whether or not there is an advocate within the Treasury Department, and I think the answer to that question, speaking just with regard to the Treasury Department is, is that we went through a process leading up to——

Mr. WATT. The answer is probably yes or no?

[Laughter.]

Mr. HAMMOND. It depends what you mean by "advocate." At what level in the organization.

[Laughter.]

Mr. WATT. OK.

Mr. Meyer, maybe we can find out whether there's an advocate at the Fed, since we've been so successful in finding out whether there is one in Treasury.

Mr. MEYER. I think in most cases when we put out a proposed rule, while it doesn't have to require an advocacy and it only has to meet a standard that has to be reasonable enough to put it out and get public comment, most of the time it really is backed up by some sense of advocacy.

I think in this case, as this was the first attempt to deal with a very difficult issue, there were really more questions.

It met, as Mr. Hammond noted, that threshold test. There were reasonable arguments that could have been made in support of it.

But we also did recognize that this was going to be a difficult issue and that we were going to benefit enormously from the comment period.

That's all we needed to do. I can't really talk for my colleagues and to say I could pin them down and say that they were 100 percent in favor of this proposal or just wanted to put it out to get comment.

At this point, once a proposal is out, the situation changes quite a bit, because it's incumbent upon us to become very objective and to be very open minded as we receive those comments. And that's the reason why I cannot come here and take any advocacy position today, because I am open minded, and I am going to be reviewing those comment letters on their merits.

Mr. WATT. Mr. Chairman, I didn't do very well. I still don't have a clue of whether this is an academic discussion or whether this is a serious rule that somebody is advocating for.

So if I could just use 30 seconds more, Mr. Chairman, I hope you all will pay close attention to the wording of the statute, whether an activity is necessary or appropriate to allow a financial holding company and the affiliates of a financial holding company to compete effectively with any company seeking to provide financial services in the United States.

I take that to mean that that's about competition between financial services companies, not competition between financial services and realtors, unless realtors are providing a financial service——

Mr. MEYER. Mortgages.

Mr. WATT. Got the point. OK. So unless there is competition already between those who can and cannot inside the financial services institution or unless real estate companies are themselves providing competition, then I think you are treading on very thin ice. And so I'm assuming that you all being as impartial as you are and not having an opinion on this will evaluate this carefully.

Thank you, Mr. Chairman.

Chairman BACHUS. Thank you.

Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chairman.

I have a concern that involves the affiliates of the banks. Given the anti-tying rules as they're written now in Gramm-Leach-Bliley that would prevent the banks from conditioning credit loans on the use of other banking services, if the banks were to become brokers, I want to know what would prevent self-dealing within the bank. That is, if the broker is a part of the bank, an affiliate of the bank, what would prevent them from offering the bank affiliates REIT, for instance, a property? And that's effectively removing the property from the full market forces. It's self-dealing, and I want to know if there is any—it seems to me that there is a potential here in that regard to weaken the market.

And I also wanted to know if there's any kind of a self-dealing firewall that you've thought about.

Mr. MEYER. I think that would come under 23A. I mean, 23A requires that those kinds of transactions between a bank and affiliate be on market terms and not more favorable than the bank could do with a non-affiliated firm.

So I do believe there are protections already in existing statutes to deal with this.

Ms. KELLY. My concern is that in the brokerage market, a property will come on, and we all know that these are very often, they aren't done—somebody doesn't just come in and sign a contract with a broker. They'll just call up and they'll say, I'm thinking about selling this ten-story building and I'm just wondering, would you like to come and appraise it? And then we'll give—you've got a bank affiliate that's going to get that.

And then what's going to happen is the person who is the broker, who plays golf with the friend over at the REIT, is going to pick up the phone and say I think I've got a ten-story building that's going to come on the market, and maybe you want to take a look at this. That's what I'm concerned about. I'm concerned that this ten-story building will never get out into the market. That has the potential to weaken the market. Because some of these things may never get out into the market. They may just be passed from one affiliate to the other of a major bank.

Mr. MEYER. The banks cannot own real estate.

Ms. KELLY. I understand that.

Mr. MEYER. Except under merchant banking.

Ms. KELLY. But an REIT can. There are investments there.

Mr. MEYER. Yes, but banks can't own REITs because they own real estate.

Ms. KELLY. But, the affiliate structures own and invest in the REITs. Under securities, no?

Mr. MEYER. No, they can't. Because they own real estate, and banks cannot directly or indirectly do that.

Ms. KELLY. I'm still—I'm sorry.

Mr. BAKER. Will the gentlelady yield?

Ms. KELLY. By all means.

Mr. BAKER. Let me ask you a question. What happens when a bank repossesses property and they call it REO? Does the bank own real estate? I'm just curious about that.

Chairman BACHUS. There is a prohibition in the Act against——

Ms. KELLY. There's a prohibition in the Act——

Chairman BACHUS. ——Investments or development of real estate activity.

Mr. MEYER. That applies to financial subsidiaries. Financial subsidiaries are expressly prohibited from engaging in real estate development or investment.

Ms. KELLY. But affiliates are not, sir.

Mr. MEYER. Not under that particular statute, but it is not a permissible activity for banks or affiliates of banks. Banks cannot own REITs. They are allowed to advise. They are allowed to act as advisers to REITs, but they cannot own them.

Ms. KELLY. I'm sorry, but I'm still a little confused by your answer. I think perhaps this is something that's a little more thorny. I would like to see a strong firewall against self-dealing if this is going to happen at all.

I have serious concern that within the larger structure of a gigantic banking financial services corporation that there could be self-dealing.

We have written in Gramm-Leach-Bliley the firewall that protects the consumer. But in a sense, if there is self-dealing with a broker and an REIT, for instance, through affiliates, there is nothing written as far as I can find in the Gramm-Leach-Bliley Act. And I think perhaps we need to look at this, because it does have the potential to affect the entire real estate market.

Mr. MEYER. Why don't you allow us to be in contact with you and work on this a little bit more closely, make sure we understand thoroughly your position, and see if we can provide you with information on this?

Ms. KELLY. Thank you very much. There is one other question I have. There was an opinion written in *The American Banker* by William Seidman that expressed concerns permitting banks to engage in real estate brokerage and management activities that might ultimately lead to the mixing of bank and commerce. And that's been a disaster in a couple of areas, in the Asian economies in Japan and Thailand. I want to know if you feel that that's a legitimate concern here.

Mr. MEYER. First of all, the issue is whether this constitutes a mixing of banking and commerce. That's what this rulemaking is all about. But, let's put that aside and talk about just the activity itself. Would this be a risky activity?

I think you have to understand that this is an agency activity. This is not owning the real estate and the potential losses that could come from changing the value of that real estate.

Now, I was here not too long ago, and we were talking about merchant banking activity. Now there's an activity that's risky. But the Members of this subcommittee seem to want to have fewer restrictions on it, seem to want to have less capital than we wanted to propose against it, but we said now that's a risky activity. That's subject to significant losses, because they hold those assets on their books.

Now, a real estate agency is a very different activity, and I don't think we should confuse what's going on with the Japanese banking system with providing banks with an opportunity to engage in real estate agency activities.

Ms. KELLY. It's the potential for changed value that I'm exactly addressing with my prior question. Thank you very much.

Chairman BACHUS. Thank you.

Mr. Bentsen.

Mr. BENTSEN. Thank you, Mr. Chairman.

Governor Meyer, let me go you one better, though, because you're right in bringing up the merchant banking. But as I recall over the last several years, it was the Federal Reserve that was very adamant about any attempt by this subcommittee or any other committee to provide any level of mixing of banking and commerce, whether it was a 5 percent rule or a 20 percent rule.

And the argument was always on the basis that—at least this was the Chairman's argument, and I don't want to hold you to his opinions—but the argument was always on the basis, well, if you start at 10 percent, it will be like Section 20, and then you'll come back, and once you hit that cap, then the institutions will come back and they'll want more.

And what I see in this proposal is in this I have to say rather tenuous argument by the nature of the prohibition in Gramm-Leach-Bliley to real estate investment, that somehow that meant that we open the door to real estate agency services. I'm not sure I recall that as being our intent. But I'm not sure any of us recall exactly what we were doing when we were writing the bill.

Mr. Baker, I think, does.

[Laughter.]

Mr. BENTSEN. And I think that Mr. Baker would go further in banking and commerce, and I agreed with him in some of those issues.

But as much as the rule says that you still specifically preclude investment, if this were to go forward, how long before the institutions are back saying, "Well, gee, we need to go one step further in real estate investment? And, oh, by the way, you know, you in Congress or Congress has given us merchant banking rules and allowed us in merchant banking and affiliates and subsidiaries, and through our affiliates through the holding company structure, we can engage at least in some real estate underwriting." And I don't know exactly what the rules are with respect to underwriting REITs or not.

So I think what my concern is that your proposal and some of the comments really are taking us down the road of banking and commerce, which is contrary to where the Fed was before.

And we know that the Treasury—and I won't hold you to this, Mr. Hammond, but we know the Treasury has had mixed minds on this over the years.

But I have to say, the argument that because some financial institutions have it as provided by law either under the thrift charter or under State laws, doesn't necessarily give you regulatory fiat to then change the Holding Company Act, in my opinion.

And I appreciate the fact that the gentleman raised the issue of REO and creditor issues related to property, but there are rules associated with that. And, for instance, banks are allowed to hold oil and gas properties that are debtor properties. But there is a time limit on the period in which those properties can be held.

And on the issue of engaging in lending and the like, why is there a difference between a real estate asset and an automobile asset? I mean, banks are lending to automobile buyers. They're lending to automobile dealers. They're lending, arguably, from time to time, to the automobile manufacturing industry. So why is there not a tie there? Why is there not a tie to inventory management? Banks lend to widget manufacturers for their inventory management. Why would it not at some point be appropriate for banks to engage in actual inventory management?

So I think a lot of these arguments are rather tenuous that are put forth, and I really have to say that—and this may be where we want to go—but I'm not sure that I see where the Fed and the Treasury have the authority to expand this far in what I think really is going into banking and commerce.

And again I say I'm one of the Members who was willing to explore that. But I think that this is where you may be headed. Now it may not be your intent. But I'm curious. You know, why is this different than automobiles? And what are you going to do if you go through with this when they come back and they say, "Well, we need more authority now to underwrite and we need to go back to where the thrifts had authority?"

Mr. MEYER. I think those are two very, very interesting questions. The first is, how could the Federal Reserve, given our opposition to the mixing of banking and commerce, even consider this proposal? I think the answer to that is, we didn't get to consider this on the basis of the bill that we would have written. We got to consider it under the bill that you wrote.

And you wrote a very nuanced bill with a lot of flexibility. On the one hand, you considered and rejected a broad mixing of banking and commerce. But in three ways, you provide opportunities for mixing banking and commerce.

We've talked about merchant banking. And by the way, in that case, we were saying we want to differentiate this from the broad mixing of banking and commerce. We want restrictions on routine management, or you had restrictions on routine management. We wanted to put them into the regs. We wanted to put into the regs something specific about holding periods, and you told us, loosen up. This mixing of bank and commerce, this is OK within the merchant banking authority. OK, that's one.

Number two, you put into the bill something called "complementary activities". What are they? They're non-financial activities that are related to financial activities. You put that in there, clearly a mixing of banking and commerce, but in some way related to the synergies and strategic direction.

Mr. BENTSEN. Well, if I might interject. And I want to hear the rest, but I may interject that as you recall, at least my understanding was at the time it was viewed as a compromise to deal with the evolving marketplace where technology might cause financial institutions and the ability to provide services to have to engage in other activities.

I'm not sure real estate is a new technology that's come about.

Mr. MEYER. OK. And the third is the way in which you set out the factors for consideration for an activity to be judged financial. It wasn't simply is it an intangible asset as opposed to a tangible asset? It was also the nature of the competition within the financial services industry. So you gave us a difficult task. It really is a difficult task. This is not an easy one at all.

But you gave us the authority and the discretion to try to sort out these issues under that language.

Now the next question you ask, well, where will it all lead? Well, we considered this proposal under its own merits. Dealing in real estate development and investment is quite a different story. That involves the holding of tangible assets, the ownership of those tangible assets. That's quite a different story than the agency activity that we're considering today.

And then with respect to automobiles, again, the equivalent for automobiles would be an agency activity where the bank didn't hold automobiles, didn't own the automobiles, but acted as an intermediary between buyers and sellers. That would be the analogy. Could it go in that direction, and that's a legitimate question: Where would you draw the line? But it is not at all owning real estate—an automobile dealership. That would be clearly forbidden.

Mr. BENTSEN. But—and my time——

Chairman BACHUS. I'm going to——

Mr. BENTSEN. Well, I'll talk to you about it another time.

Thank you, Mr. Chairman.

Chairman BACHUS. Mr. Riley.

Mr. RILEY. Thanks, Mr. Chairman.

To follow up on what Mr. Bentsen was saying, I think he makes a legitimate point. The one thing that we were adamant about in our Gramm-Leach-Bliley bill is that we do not want to mix banking and commerce.

If we start down this slope, which I think is a very, very slippery slope, I don't know how you ever crawl back up. You can make a legitimate case—and I was in the automobile business for a while. And I promise you, there is more financial activity in an automobile dealership than there is in any real estate brokerage company in this country.

If you can make a legitimate case that you can have a financial instrument, which is another point that I want to discuss with you. If I just buy something from you, is there a financial transaction, or is that complementary? How that be classified? If there was no mortgage? Could a broker do that and not mix commerce and banking? I don't think so.

But to elaborate I guess, if you get to the point that we allow any financial transaction to make a determination whether or not that is financial in nature, then I think what we've done is essentially allow total mixing of banking and commerce.

When my wife uses a credit card to buy groceries, that becomes a financial instrument that the bank has control over, and you could even make a case that the bank loans her the money to buy her groceries. Well, does that mean that a bank, because of this involvement with the credit card company, has the option then to go and own a grocery store? Should they be able to own an automobile dealership?

I don't know where you stop. Actually, I think it's harder to make a case for real estate brokerage than it is for an automobile dealership because there is so much involved in insurance and financing and everything that the bank would normally be associated with.

But there are so many things in real estate. If I lease a piece of property from you, I don't think that becomes financial in nature. If you and I have a transaction between ourselves, that is not financial in nature. So if we allowed this to happen, I cannot consider—it's hard for me to realize any point where any transaction that you did with any other business in this country wouldn't be financial in nature.

Because fully 30 or 40 percent of the real estate transactions in this country do not involve mortgages. And if that's the case, then should a broker be able to sell directly without a mortgage? I don't think so.

So I think you have a weaker case to make with real estate brokerage than you probably would with automobiles, as Mr. Bentsen said, with a grocery store, with a Visa card, with almost anything.

We need to go back, and if we need to redefine what we did with Gramm-Leach-Bliley, then maybe this subcommittee should do it. But again, the one thing that we were adamant about is that we do not want to go down the road that Asia went. We do not want to mix commerce and banking. And this, to me, would open the floodgates for opportunities to consider any transaction that a bank might be a participant in to become financial in nature, and then you have total mixing of banking and commerce.

Mr. MEYER. It's the very purpose of this proposal to sort out precisely those kinds of issues about where to draw the line. And I am completely sympathetic with your view that you don't want to get on this slippery slope. You don't want to say anything that's financed you can own because it's financed.

Mr. RILEY. Right.

Mr. MEYER. That's absolutely clearly unacceptable. The difference here might be that we're really talking about an agency activity that doesn't involve owning the real estate.

Mr. RILEY. So you're saying if there was an automobile leasing company or an automobile brokerage company, then that would be financial in nature?

Mr. MEYER. Not leasing, but——

Mr. RILEY. Well, I think that's utterly ridiculous.

Mr. MEYER. I don't know that anything like that exists. But that's what we'd have to consider.

Mr. RILEY. Sure they exist. And if they don't exist, when you open this door, they will exist within 6 months. And that's why I'm saying, if we need to redefine in this subcommittee what we meant, then maybe we should look at it here and give you some better direction.

But I think once we make this kind of breach of what the trust in this subcommittee tried to——

Mr. MEYER. It would be very helpful for us to understand better what the subcommittee meant when it said that we should take into account what activities are necessary or appropriate to allow banks to compete effectively in financial services.

Mr. RILEY. Well, I think what Mr. Bentsen said is right. There is evolving technology out there today that is a part of and inherent in and a part of a financial holding company. And as that develops, we don't want to do anything that would hinder that type of technological advantage that that company might develop.

But on the other hand, there was never any question, at least in my mind, with other than Mr. Baker, my good friend here, about whether or not you should mix commerce and banking. And I think this subcommittee was very adamant in our opposition to it.

And if we need to redefine that, I think that is a better approach than trying to take each individual, specific item that could possibly come up over the next 5 years and have a specific ruling dealing with one specific trade group or whatever.

Mr. HAMMOND. In my mind, if I might add just to that, it strikes me that in the course of the discussion, the confusion arises over whether there is a bright line standard or a bright line principle within Gramm-Leach-Bliley which says that there shall be no mixing of banking and commerce.

Then within the statutory language itself, it is much more flexible, much more open to interpretation, and lays out standards dealing with competition and competition in financial services. So what you have is a bright line principle that is in some regards at odds with the construct within the statute.

Mr. RILEY. And I appreciate that. I honestly do. And I know you have a difficult task in trying to accomplish and interpret what we mean. But it seems to me that the more obvious way to handle this is for this subcommittee to come back and revisit it and give you specific information on how we would like for you to handle it rather than you having to make an interpretation on any and every possible thing or contingency that might come up over the next 2 or 3 years. Because they're going to continue to come. If you make this exception, I promise you, you will have 200 other exceptions that will be requested within the next year.

It makes more sense to me for this subcommittee to go back and redefine what we did if we need to rather than your agencies having to go in and make these kind of determinations.

Thank you, Mr. Chairman.

Chairman BACHUS. Thank you. We might let the Housing Committee take those issues up.

[Laughter.]

Chairman BACHUS. Mr. Gonzalez.

Mr. GONZALEZ. Thank you, Mr. Chairman.

My questions are not as interesting as the others, because they don't have real case scenarios. But really process and policy as you go about this, because we have delegated that responsibility to you. So we're looking to you to do your jobs.

The first, how you perceive the role of Congress in the rulemaking process. And this is a good example. We really don't know. And I'm not sure where you think we should come in, at what point should we be consulted? When should we consult? When do we have an active role?

Question number two really has to do with what you need to take into consideration. And this is kind of fundamental, I guess, but it's regarding changes in the marketplace, changes in technology, and then what's happening out there in the marketplace to allow banks to be competitive with other entities that somehow are providing some service.

When we say "changes", I've always anticipated that that's the reason we passed the Act. As things existed at that time in 1999, and then prospectively, what other changes might occur. Do you see that if you could not specifically say there's been a change in the marketplace, technology or anything happening with other entities that provide financial services since 1999, that you would not be able to promulgate any rules that would allow financial institutions to get involved in other activities?

So I guess I want your timeline. Where do you draw that, if any? I assume that you don't. But that was just an assumption. But listening to the debate or the discussion, I now have a question.

Another consideration is, as you go about this rulemaking, if in fact you determine that wherever the financial institution now will have some activity that it could result in market domination, undue influence, conflict of interest, does that basically kind of trump all the other considerations? Or is it going to be a decision that's made and you say, hey, that's the marketplace? If that happens, that happens.

The last part of my question goes back I guess to what the other Members have already touched on, and that's conceptually I'm thinking. As you determine other areas for financial institutions, affiliates, subsidiaries and so on to venture, do you then have an ever-expanding universe? In other words, once you identify that new activity, then do you have the potential for other things to be related complementary to and so on that didn't exist before? It will be a nexus, what I'm saying, to the next step, which I think some Members have already touched on.

But I'm just thinking again in the way of policy and how you go about this, because this is the first question before you. But it will set a standard. And we will be looking to you as to what precedents you're going to be establishing now as you fulfill your duty, which we did delegate to you.

Mr. HAMMOND. I think it's very clear as we look at applying the statutory construction that in whatever final outcome we reach, we have to clearly delineate how we address those very important issues.

It's important for us to be clear on what those standards are and how they're being applied, and it's important for us to explain the rational basis for any decision going forward.

It's my understanding with regard to your first question with regard to the timing that the statute does not speak to in terms of from Gramm-Leach-Bliley going forward, but in fact talks about changes in the marketplace in a more general construct. That's certainly been the way we've been looking at it at this point in time.

With regard to the competitive questions, I think that's something that we very much want to look at. Competition is an important element in this rulemaking process. How we look at those competitive standards and what that means is going to be a key part of the deliberative process going forward.

With regard to your third question regarding add-ons or supplemental activities, if I understand it, kind of a domino effect or chaining of activities, once again, I think you have to look back to the underlying construct of the statute: Are they, in and of themselves, related to—incidental to the financial activities of the bank?

And so, you have to make sure that you maintain a discipline in how you look at and evaluate each of those proposals. But I don't doubt that that's an incredibly difficult continuum as time goes on as you look at more and more issues and their various relationships.

Mr. GONZALEZ. Where do we come in as far as Members of Congress and this subcommittee in the rulemaking process, in your mind?

Mr. HAMMOND. I think that's always—agencies always look to Congressional intent in implementing any statutory delegation of authority. Obviously with new delegations, there's more consultation involved in the process to try to divine the intent and to make sure that it's consistent with the underlying purposes of the statute.

I think obviously when you're dealing with something that is brand new, you have probably a higher obligation than you do in a situation where you have existing statute for some period of time.

Mr. GONZALEZ. Time's up. Thank you very much.

Chairman BACHUS. Let me say this for the record. I think it's important because of some of the questions.

At the present time, with the Gramm-Leach-Bliley, you are charged with continuing to look at whether or not our national banks are competitive, and coming to us with proposals when they're disadvantaged.

So the fact that there's some resistance to this particular proposal, I hope won't have a chilling effect on your statutory charge to continue to bring to us other issues that might be more receptive.

I hope you're following what I'm saying, because we very much are anxious to have a strong national banking system. And part of Gramm-Leach-Bliley was to allow banks to be competitive with other financial institutions, and I think we all agreed that they were at a disadvantage, at least as passed, we did, and we charged you all with continuing to look and make proposals.

And the fact that there's some resistance, it's still a charge that you have.

Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

I share a little bit of the confusion I think that's been indicated by some of the other Members. I think Mr. Watt, for example. And I'm a little bit curious as to why the Board and the Department are jumping into this with both feet right now, so early in the process. That process being Gramm-Leach-Bliley is still a very new animal.

We have been asked, for example, to look at going back and taking another look at the privacy regulations, the privacy aspects, and a lot of us feel that the best course of action is to just give Gramm-Leach-Bliley a little bit of time to sort of settle in and filter out, and then come back and take a look at it. Let's let it work itself out a little bit.

There's nothing in the statute, despite the very broad power, to make the determinations that you all are considering that's given to the Department and to the Board that requires either the Board or the Fed to initiate these proposed rules, is there?

Governor MEYER. No. But what we have done here is to respond to a request. Now we could have said, it's just too early, and although we have authority and responsibility to entertain requests for new authorities, we're not going to fulfill that responsibility because the bill is new.

That didn't seem to me appropriate.

Mr. BARR. Well, I think the way you've cast that sort of colors it a little bit. It's not that you're telling people we're not going to follow our responsibility. Certainly the only response to that will be well of course you have to follow your responsibility. So I think your characterization of it presupposes the answer you'd like to have, which is justification for putting the proposed rule out.

The Board and the Treasury could simply say, we're not abrogating our responsibility to make a determination of the statute; we just think it's premature. That wouldn't be abrogating any responsibility, would it?

Governor MEYER. No. But I think that in this case, we recognized that these choices were going to be difficult, these were going to be nuanced decisions.

Mr. BARR. Why rush into it then?

Governor MEYER. Nothing is a rush. We're taking our time and at some point we have to begin to sort out these issues and these requests.

Mr. BARR. Well why would you choose as the starting point for sorting out these issues, two proposed rules that presuppose that the services that the banks are requesting are indeed proper financial services related to or are incidental to.

Because that's the way the rules are cast, the proposed rules are cast, they presuppose that. And I suppose you all could have come out with a more neutral proposal or a proposal on the other side.

Why did you cast them this way if your intent was simply to get information to begin sorting out the process?

Governor MEYER. Well, I think it would have been unusual to put out a proposal to say that we don't think these are permissible activities.

Mr. BARR. With a new animal here, why would that be any more unusual than this?

Governor MEYER. This seemed like the appropriate way. There was a threshold case that could be made. There were reasonable arguments that could be made.

We put it out in this form to get the discussion going, to get the feedback from practitioners, from market participants from both sides to help us sort out the issues and hopefully make a very informed decision, and also begin to draw the line that we're going to have to draw on what constitutes financial——

Mr. BARR. Why are you going to have to? I thought there was nothing in the statute that requires?

Governor MEYER. It says that we are supposed to rule on new activities. If we get new requests, it seems to me, we're supposed to consider them.

Mr. BARR. So you do read into the statute an obligation?

Governor MEYER. Not an obligation to put out a proposal in any case, but to consider those requests.

Mr. BARR. But there's no requirement in the statute to propose a rule simply because you get a request?

Governor MEYER. No.

Mr. BARR. OK.

Under Gramm-Leach-Bliley Section 103, it looks like it says that the "Board shall not determine that any activity is financial in nature or incidental," and so forth, "if the Secretary of the Treasury notifies the Board that the Secretary of the Treasury believes that the activity is not financial in nature or incidental," and so forth.

Treasury did not communicate that to you, is that correct? I mean, Treasury never made that determination, did they?

Governor MEYER. That's correct.

Mr. BARR. OK.

The next paragraph then says "The Secretary of the Treasury may recommend that the Board find an activity to be financial in nature and incidental to a financial activity."

Did Treasury do that?

Mr. HAMMOND. Reach a final conclusion with that regard? No.

Mr. BARR. Under that language there, Treasury recommendation, which is under the paragraph entitled "Proposals Raised By the Treasury," it says, "The Secretary of the Treasury may, at any time, recommend in writing that the Board find an activity to be financial in nature or incidental to a financial activity."

Did the Secretary of the Treasury do that?

Mr. HAMMOND. I don't believe we reached that point in the process, no.

Mr. BAKER. [Presiding.] Mr. Barr, you've expired your time and since we've got a vote pending, may I move on to another Member now?

Mr. BARR. I beg your pardon?

Mr. BAKER. I said your time has expired, and since we have a vote pending, I'd like to move on to another Member to try to get more Members in before the vote.

Mr. BARR. OK, could I just get a definitive answer on that? So the answer is no, the Secretary did not make that recommendation?

Mr. HAMMOND. No, we did not. Correct.

Mr. BAKER. Thank you, Mr. Barr.

Mr. Kanjorski.

Mr. KANJORSKI. Thank you, Mr. Chairman.

I think some of the previous questions from Members of this subcommittee indicate that we have done several things. Maybe the Congress made a gross error in delegating legislative authority to the regulator and to the Secretary. I am probably predisposed to believe that we shouldn't have done that. And maybe it would be right that you send back this law and, I think, make that determination.

Let me ask this question. Did you make a determination whether or not there was an unconstitutional delegation of authority by the Congress to the regulators or the Federal Reserve or the Treasury?

In fact, listening to your answer, Mr. Hammond, I sort of thought that you felt you had an obligation to start legislating here.

Mr. HAMMOND. No, we have certainly not looked at the constitutional question that I'm aware of.

Mr. KANJORSKI. Well, should you not maybe look at that? With the predisposition of the Supreme Court today being more conservative regarding what the Executive Branch and independent agencies can do, maybe you should sit down and say, look, it is up to the Congress, not the regulators to define what is commerce and what is financial services.

Mr. HAMMOND. Well, I think we——

Mr. KANJORSKI. And by forcing you to do that in the Act, we have delegated that legislative authority to you.

Now, putting that question aside, I think you could understand the intent of the Act from the committee hearings and conference reports where the issue of commerce and financial services was addressed.

It was not like we did not address that issue. And, as I recall at that conference, although I was ill at the time, I think we agreed to absolutely maintain that firewall.

So the question seems to pose itself, and I think Mr. Barr and Mr. Gonzalez addressed that. What happened that suddenly what we all presupposed, at least on the side that wanted to maintain the firewall, that somehow this moved from a commerce to a financial services problem.

Now, having said all those things, I approach this issue in an entirely different direction. I think we want competitiveness in the banking system. We want to level the playing field. But in some of your comments earlier, I got the indication that you are driving toward the least common denominator.

You are saying because 26 States allow some of this activity to go on, we are going to have to allow all the States to do it under the Act.

If that is the case, we are going down that slippery slope anyway. I am sure I could find some State legislature or regulator in this Union willing to allow banks to sell automobiles and finance them out of the bank.

So we are going into that business. And if we can persuade any one of the 50 States to approve something else, then you are going to say this is now competition, and you have to approve it?

Why not look at the other side? You are not talking to us about the interests of the consumer. As you know, the banks can pretty much take care of themselves, and so can the realtors. But, there are more than just California consumers, and there are more than just New York City consumers.

There are consumers in Pennsylvania. Where we have gone in the last 10 or 15 years in this country? In fact, we have wiped out most small bankers. Well, we said that was necessary, so we accepted it. We have also wiped out most independent insurance agents, or soon will wipe them out. Now we are going to wipe out the realtors. I think you could extend this thinking to the legal profession, too. I am sure there are so many financial transactions that banks can buy legal firms and run them. I have no doubt about that.

What is going to be left in our local communities for leadership? Everybody is going to be working for three or four huge, gigantic institutions that are 100, 500 or 1000 miles away from their community.

Aren't the consumers the people that live in these communities? I have personal experience from it. I know when I entered Congress, we had 40 or 50 community bankers in my district; today, we have five or six.

I know when we would have a United Way fund drive, we could call on the insurance agencies, call on the lawyers, and call on the realtors. They are, however, starting to disappear, because of, as Mr. Baker pointed out, larger institutions.

Now we can not change the march of progress and time, but we do not have to rush down that road with the conviction that we are going to homogenize this country to such an extent, and the communities that are made up of the consumers be damned. That is what you are doing with this proposal.

Mr. BAKER. Mr. Kanjorski, if I may, you've exceeded your time. Mr. Hinojosa is the last Member to be heard. We might be able to wrap this up if we get Mr. Hinojosa in here real quick. We've got about 9 minutes left till the vote, and then we'll recess.

Thank you, Mr. Kanjorski.

Mr. HINOJOSA. Thank you, Mr. Chairman.

I want to identify with and agree with Chairman Baker on the interesting challenge before us here in our Financial Services Committee.

I have an open mind on this proposal before us on the proposed rule.

As I looked at Under Secretary Hammond's remarks, you say that in making determinations, the 1 year old Gramm-Leach-Bliley Act requires us to take into account, among other factors, the third bullet: changes in the technology for delivering financial services, and fourth, whether the activity is necessary or appropriate to allow a bank and its subsidiaries to compete effectively.

And I like competition, and so I want to keep an open mind before I make a decision.

I was one of the ones who said that I wanted to think out of the box at a time where technology facilitated internet shopping, and has made it popular, at a time when one-stop capital shops are being sought out by homebuyers, at a time where homes have sold for more than what the asking price for the home started out.

An example is that I've been renting a townhouse and very near two blocks from my home here on the Hill, a refurbished home went on the market, and within 10 days it sold for not the asking price of $300,000, but for $340,000.

There were bids taken, and by the time it was over, it sold for more.

So times are changing, as Chairman Baker pointed out, and those of us who have very close relationships with realtors, like I do with my son, who is a realtor, I find it difficult to just simply say that we have to continue to do business as in the past.

So I repeat, I like the competition, but what and how do you feel about taking care of the low-income and the middle-income families who, in many cases, are not the customers that the big banks are going to seek.

How are we going to take a look at the Community Reinvestment Act so that big banks can put back into the business the moneys that they are taking from everybody in that community, so that if this proposed rule should get 51 percent of the votes out of this subcommittee and move forward, that they too can benefit from this competition.

What are your feelings about that?

Mr. HAMMOND. I think that, in general, competition benefits all consumers, and to the extent that you foster an environment of fair and open competition, everyone stands to benefit in the marketplace.

With regard to your specific questions, I think those are issues of addressing the low- and moderate-income communities, those are issues that are addressed in other aspects of the legislation and other existing statutes.

And they factor into any decisionmaking as they would factor into the competition questions.

But specifically, the standards with regard to those communities are addressed in different statutory requirements.

Mr. HINOJOSA. Time is running out. We need to go vote. I want to be sure that there is specificity, that there is specificity that says, just like in the Community Reinvestment Act, that all banks are going to put back into their community. And so I want to be sure that I'm vocal, that if I am to support this, that we look at how banks are going to make sure that they welcome the low- and the middle-income families into being served.

Mr. BAKER. Mr. Hinojosa, we're down to about 4, 3 minutes, 30 seconds.

Mr. HINOJOSA. Thank you, Mr. Chairman, I appreciate the opportunity to say what I had on my mind.

Mr. BAKER. Thank you, sir.

I wish to thank both the gentlemen for their tolerant participation this morning.

Just a couple of comments for the record. And I should state, not on Chairman Bachus' behalf, but clearly on my own. If we're going to clear this up, we need to look at credit unions who, through service organizations, can have brokerage operations today under current law.

I don't know that the subcommittee is aware of the credit unions' violation of common sense.

Second, if we're going to be risk adverse, we need to look at the 25 percent equity position a bank may take under current law in a private corporation, or worse yet, the 40 percent position it can take in a foreign corporation, which certainly is going to be suspect.

Finally, we need to understand that, in the history of this subcommittee, we not only voted for a commercial basket in which a bank could own part of a commercial firm with certain permissible activities—obviously a breach of commerce and finance—which was inexcusable. But, we also passed on this Committee, although it did not become law, a reverse basket where commercial enterprises could own banks. Now that was absolute heresy which never made it to the floor.

We have a lot of equalizing we need to do in this seriously flawed marketplace. If we're not going to pursue the rule which the Fed is proposing today, then this subcommittee needs to be instructed to correct the errors of the past.

With that comment, I'd like to call this subcommittee hearing to recess, and we will return, and Chairman Bachus will return momentarily.

[Recess.]

Chairman BACHUS. The Subcommittee on Financial Institutions and Consumer Credit hearing on Federal Reserve and Treasury rulemaking will now come to order.

Let me introduce members of the second panel. I appreciate your attendance and your patience.

Our first panelist, going from your right, is Mr. Richard A. Mendenhall, President of the National Association of Realtors.

The second panelist is Mr. Phillip M. Burns, Chairman and Chief Executive Officer of Farmers & Merchants National Bank of West Point, Nebraska on behalf of the American Bankers Association.

The third witness is Mr. Robert F. Nielsen, President, Shelter Properties, Inc., of Reno, Nevada, on behalf of the National Association of Home Builders.

Mr. Frank Torres, Legislative Counsel for Consumers Union.

Mr. John Roebuck, Chairman of the Board, National Auctioneers Association.

Mr. Richard J. Parsons, Executive Vice President, Bank of America, testifying on behalf of the Financial Services Roundtable.

We appreciate your attendance.

Mr. Mendenhall, if you will lead off.

STATEMENT OF RICHARD A. MENDENHALL, PRESIDENT, NATIONAL ASSOCIATION OF REALTORS

Mr. MENDENHALL. Thank you, Mr. Chairman.

Good morning. I'm Richard Mendenhall, President of the National Association of Realtors. I am from Columbia, Missouri, where I own three real estate firms specializing in single family and commercial brokerage and property management.

I've been a realtor for over 25 years and I'm the fifth generation in my family in the real estate business.

I'm pleased to represent the nearly 760,000 members of the National Association of Realtors who participate in all aspects of the residential and commercial real estate market.

First, let me thank you sincerely for holding this hearing today. The issue before us is an extremely important issue and raises many concerns as it affects not only the banking and real estate industry, but more importantly, consumers.

As you know, over 175 of your colleagues in the House of Representatives have written letters to the Federal Reserve and Treasury expressing their concern about their proposal to classify real estate brokerage and property management as financial activities, and therefore permissible for financial——

Chairman BACHUS. Mr. Mendenhall, would you pull the mike a little closer. And let me ask all the gentlemen to do that.

Mr. MENDENHALL. Be glad to.

As you know, reclassifying real estate leverage and management as financial activities therefore makes them permissible activities for financial holding companies and financial subsidiaries of national banks.

The National Association of Realtors opposes this proposal. We oppose it because it violates congressional intent. At no time during the debate of the Gramm-Leach-Bliley Act did Congress, nor the banking industry, for that matter, suggest that real estate brokerage and property management were financial in nature, or should be included in the newly defined activities.

It was clear that the issue at hand was to permit banks to engage in securities and insurance activities. Also clear was congressional intent to maintain the separation of banking and commerce.

In fact, on at least three occasions, Congress debated and voted decisively to keep them separate. Real estate brokerage, as a commercial activity, was considered off the table.

The Gramm-Leach-Bliley Act is perfectly clear. As you can see from the chart to my right, a chart of permissible activities, real estate brokerage and property management are conspicuously absent.

Furthermore, since 1972, the Federal Reserve has maintained that real estate brokerage and property management activities are not closely related to banking.

Banking industry representatives say that because a home is financed, real estate brokerage is incidental to banking.

To apply this standard to all activities deemed attractive business opportunities for banks will most certainly lead to banks entering all other commercial activities.

Will bankers soon be selling cars, boats, washing machines, and other tangible products that involve financing?

The act of financing real estate or any other tangible asset or durable goods simply does not transform that asset into a financial instrument. Banks have it backward. It is the mortgage that is in fact incidental to buying real estate.

Let me put this in perspective. There are two parties to every real estate transaction; a buyer and a seller. The seller requires no financing for his part of the transaction. Therefore, right off the bat, 50 percent of the transacting parties handled by real estate firms involve only the marketing and selling of the property.

These sellers are not shopping for a loan or any other lender services.

The other 50 percent represent the buying side. You might assume that these buyers require a mortgage. However, according to the 1999 American Housing Survey, approximately 20 percent of home purchases are made without financing.

This means that if this proposal is adopted, it places the Federal Reserve in the embarrassing position of permitting financial holding companies to engage in a commercial activity where 70 percent of the consumers involved in the transaction require no financing.

I'd like to repeat that again. Seventy percent of the consumers involved in the transaction would require no financing.

Some say that the real estate industry is afraid of competition. On the contrary, we welcome competition as long as the rules are fair. I would point out to you that a financial holding company and national banks already have at their disposal Federal advantages and subsidies, as listed on our second chart. Pitting federally-subsidized, highly advantaged entities with a high barrier to entry against unsubsidized, less-advantaged real estate firms with a relatively low barrier to entry is a recipe for trouble.

Cash-rich banks could use profits from taxpayer insured operations to subsidize real estate functions, freeing more resources to consolidate market power.

Some real estate firms would be forced to close their doors. With less competition, consumers would be at risk and disadvantaged. Consumers will be hurt by this proposal in a number of ways, including limited choice, unfair treatment, and possible increase in cost.

However, the concern that resonates most when asked is the treatment of their financial and personal information under a bank-owned brokerage scenario.

In conclusion, I've identified some of the reasons we oppose the proposal before us today.

We hope that the Treasury Department and Federal Reserve will agree with us and deny the petitions to define real estate brokerage and property management as financial activities.

We also encourage Congress to reaffirm its commitment to maintain the separation between banking and commerce. This is not only necessary, but essential if we are to ensure that the real estate market, one of the largest sectors of the economy, remains fair and competitive.

We must protect consumers and their rights to the greatest selection of providers in buying or selling of their property.

I would like to thank the subcommittee for your time and attention to this critical issue.

[The prepared statement of Richard A. Mendenhall can be found on page 78 in the appendix.]

Chairman BACHUS. Mr. Burns.

STATEMENT OF PHILIP M. BURNS, CHAIRMAN AND CEO, FARMERS & MERCHANTS NATIONAL BANK, WEST POINT, NE, ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION

Mr. BURNS. Thank you.

Mr. Chairman, first I would like to thank you for holding this hearing.

The issues we are here to discuss are not new, in fact, they have been debated in this legislative body for years.

What is new is that in 1999, Congress enacted the Gramm-Leach-Bliley Act. The fundamental tenets of that Act are to promote competition among providers of financial and related services and to ensure that financial services holding companies can adjust to the marketplace.

Congress recognized that regulatory flexibility was vital in a dynamic marketplace. Congress expressly left it to the Fed and the Treasury to determine what additional services could be offered by banking organizations.

In putting forth the proposal on real estate brokerage and management, the Fed and the Treasury are following exactly the process Congress created when it passed Gramm-Leach-Bliley only 18 months ago.

In my small town in Nebraska, I would like to offer my customers the same services as our competitors, and that includes real estate brokerage and management. In fact, the ability to offer real estate services may be more important for smaller banks like mine in rural areas.

In these communities, the bank is perceived as having the best information on properties offered for sale, including farmland acreage. Small banks would likely partner with existing real estate brokers in order to provide these services.

In my statement today, I would like to make three key points:

One, competition will be enhanced by bank involvement in real estate brokerage;

Two, consumer protections would be even greater with bank involvement; and

Three, the regulatory process should be allowed to work as Congress intended when it passed Gramm-Leach-Bliley.

And I would like to briefly touch on each point.

The benefits of competition are well known. Competition improves efficiency, pricing and service levels, all to the benefit of homebuyers. Not all banking organizations will choose to offer real estate services, but those that do will enter the market because they believe they can do a better job serving customers.

While realtor opponents of competition try to block bank participation, many realtor firms offer both real estate and banking services.

Congressman Baker, earlier in his comments, made reference to looking up ads by realty firms this morning on the internet, and today I have brought a sample of such an ad, which is to my right.

The ad on display here, from Long & Foster, this area's largest brokerage firm, makes no bones about providing end-to-end services. This ad touts Long & Foster as being more than a great real estate company, but also a great mortgage, title, and insurance company too.

The ad goes on to say, "Imagine the convenience of buying a home, securing the mortgage, arranging the title work, and getting homeowners' insurance all in one place."

And Long & Foster is not an isolated example. Century 21, Caldwell Bankers, GMAC, Prudential, and many others all combine financial services like loans and insurance with real estate brokerage.

This is exactly the type of marketplace change that Gramm-Leach-Bliley was designed to have the regulators address. In that regard, I note that credit unions can and do offer real estate brokerage.

Importantly, bank involvement is consistent with safe and sound banking. All consumer protections that apply to independent realtors would also apply to bank affiliated real estate agents, including all State licensing, sales practices and continuing education requirements.

Banks already must meet tough privacy requirements and are subject to anti-tying regulations. And because brokerage and management are agency activities, they pose no risk to the soundness of the bank.

After more than 20 years of debate, Congress recognized the importance of regulatory flexibility when it enacted Gramm-Leach-Bliley. Congress could have excluded real estate brokerage and management explicitly, as it did for real estate development, but it did not.

Rather, Congress left that decision to the Fed and the Treasury. Thus, the National Association of Realtors is now asking Congress to intervene in the very process Congress created only a year-and-a-half ago.

The Fed and the Treasury should be allowed to follow the process that Congress created.

In conclusion, increased competition benefits customers. It is a catalyst for innovation, more customer choice, better service and competitive prices. My customers would certainly benefit if my small bank could offer real estate services.

Again, Mr. Chairman, I'd like to thank you for this opportunity to testify.

[The prepared statement of Philip M. Burns can be found on page 99 in the appendix.]

Chairman BACHUS. Thank you.

Mr. Nielsen.

STATEMENT OF ROBERT NIELSEN, PRESIDENT, SHELTER PROPERTIES, INC., ON BEHALF OF THE NATIONAL ASSOCIATION OF HOME BUILDERS

Mr. NIELSEN. Chairman Bachus and Members of the subcommittee, my name is Bob Nielsen, and I'm President of Shelter Properties, Incorporated, a company which builds and manages multi-family properties.

I'm also Chairman of the National Association of Home Builders Housing Finance Committee, and past chair of the Federal Government Affairs Committee.

I'm here on behalf of the 203,000 members of the National Association of Home Builders to express our views on this proposal.

We oppose the proposal and believe that real estate brokerage and property management are inherently in nature, anti-competitive, and would adversely effect consumers.

For these reasons the proposal arguably violates both the letter and the spirit of the law.

First, I'd like to speak to the proposal as it relates to financial holding companies and national banks engaging in real estate management services.

The term "real estate management" encompasses numerous activities. As a property management company owner, we perform such functions as preparing and overseeing marketing plans, finding tenants, negotiating leases and renewals, developing operating and capital budgets, preparing maintenance and repair schedules, purchasing equipment, materials, and supplies, supervising employees or contractors that perform repair, maintenance, and landscaping work, collecting rents, and holding security deposits.

I submit that these functions are intrinsic to the day-to-day operation of a commercial enterprise. Classification of these activities as financial, or incidental to financial activity, blurs the line between banking and commerce so as to render it non-existent.

If this proposal is allowed to go forward, it would be difficult to predict what activities would not fall under such a heading.

Allowing financial holding companies and national bank subsidiaries to engage in real estate management would also create an unfair competitive environment for real estate management firms not affiliated with banks.

It would deprive the current participants of their right to compete in the marketplace without undue influence by banking entities.

I, as a real estate property manager, must disclose proprietary data on rental market conditions and projections, business plans, and data on specific properties. This would be a sensitive situation for a real estate development firm that has a property management unit in that data on both development and management operations could be required to support loan decisions.

This information, if shared by the bank with its property management affiliate, could give that entity an unfair competitive advantage over other firms in the market.

Also, this proposal would create conflicts of interest when banks must make decisions about financing involving companies with competing property management operations. Banks may be unwilling to provide financial services including loans to competitors, or may provide such services at terms that are less attractive than those extended to its property management affiliate.

Second, I will address the proposal that would allow bank holding companies or national banks to engage in real estate brokerage.

Real estate brokerage involves bringing together parties for the purposes of accomplishing a real estate purchase, sale, exchange, lease or rental transaction. Again, these activities are commercial in nature, not financial.

Just as with real estate management activities, the financial components of real estate brokerage are incidental to the commercial elements of the transaction.

Real estate brokerage activities do not satisfy the test of being financial or incidental to financial activity.

Finally, this proposal would be harmful to consumers. Despite the assertion that consumers benefit from one-stop shopping, there is a significant risk to consumers who utilize brokers affiliated with banks.

Consumers utilizing these services might not have access to independent sources of information that they would have if they used an independent real estate broker.

Also, a consumer could reasonably fear that they might not be approved for financing of a real estate purchase if they do not use the brokerage and other services of the affiliates of the banking organization.

Again, we believe that going forward with this proposal would be inconsistent with the congressional intent in passing Gramm-Leach-Bliley.

We are grateful you have had this hearing today and listened to our views. We hope that the subcommittee can utilize its oversight authority to reaffirm its commitment to maintain the separation of banking and commerce.

Thank you very much.

[The prepared statement of Robert Nielsen can be found on page 121 in the appendix.]

Chairman BACHUS. Mr. Torres.

STATEMENT OF FRANK TORRES, LEGISLATIVE COUNSEL, CONSUMERS UNION

Mr. TORRES. Chairman Bachus, Members of the subcommittee, Consumers Union appreciates the opportunity to be here today. I've got realtors to the left and bankers to my right, and maybe I'm stuck in the middle with some of you on some of the issues that are related to the proposed rule.

Chairman BACHUS. You also have an auctioneer there.

Mr. TORRES. That's right, but that kind of skews the perspective then perhaps a little.

I do want to raise three points about the proposed rule today.

First, we believe that it's questionable if this type of activity is permissible under Gramm-Leach-Bliley.

Second, the existing marketplace might not be perfect for consumers, but allowing banks in won't necessarily change things or automatically provide benefits for consumers.

Third, if banks are allowed to be real estate agents, then there need to be safeguards like those Congress included in the Gramm-Leach-Bliley Act for the retail sales of insurance by financial institutions.

I guess the threshold question here is whether Congress intended that banks be allowed to engage in this type of activity when it passed the Financial Modernization Law.

Many Members, including some today on this subcommittee, have said, no.

During the financial modernization debate, much concern was raised about the mixing of banking and commerce. Consumers Union, at that time, testified that "We opposed permitting federally-insured institutions to combine with commercial interests because of the potential to skew the availability of credit, conflict of interest issues, and general safety and soundness concerns from expanding the safety net provided by the Government."

You let the banks get a toe in now, as Congressman Bentsen said, or perhaps someone else, they'll keep on coming back to the well. The next thing you know, they've plunged in and they're swimming across the Atlantic and the taxpayer gets to pay for the rescue mission when something goes wrong.

What can a consumer expect if banks are allowed to engage in real estate activities? We've heard a lot about benefits. Are we going to see cuts in commissions? Are we going to see lowered costs, perhaps reduced fees? No selling of junk products and the protecting of my personal information?

The banks' track records make us a little skeptical. Banks are still charging consumers a lot of fees for their bank accounts, unless of course you maintain a large balance, which many consumers don't.

Banks continue to oppose life line banking accounts. Will they also shut out lower income people if they are allowed to participate in the real estate marketplace?

Some banks are partnering with payday lenders that charge consumers in excess of 300 percent for loans. And they use existing national banking laws to avoid having to comply with State consumer protections.

ATM fees have quadrupled. Credit card practices are out of hand and consumers continue to get hit with fees upon fees. Fannie Mae and Freddie Mac have both estimated that many consumers in the sub-prime market, where banks are participating more and more, can actually qualify for better loans.

So to the extent that banks are already participating in the marketplace, through offering mortgage and home equity loans, some of their practices leave a lot to be desired.

And what incentive will the banker's agent have to refer a customer to a better product that another institution may offer?

And we're really skeptical about the value of one-stop shopping for consumers, especially those who don't have a lot of money.

The financial services industry has opposed virtually every effort to improve the financial services marketplace for consumers, including attempts to curb predatory lending at both the Federal and State level.

Financial institutions have opposed changes to regulations protecting consumers who take high cost loans, and even expanding some disclosure laws that the Federal Reserve Board has proposed.

It's ironic that the institutions who claim they want to get into this marketplace more oppose efforts to keep people in their homes by avoiding foreclosure and other problems that they have with predatory loans.

Predatory lending absolutely needs to be addressed as part of this discussion, because it gives all of us an idea of what to expect from some of these financial institutions.

We would say clean up your act first before we even begin this discussion of allowing banks into the marketplace.

When confronted, some lenders say that they will restrict credit or even leave the marketplace altogether. Lenders made that argument in North Carolina, and North Carolina passed the Predatory Lending Law anyway, and it hasn't affected lending in that State.

Now Congress included some very good consumer protections on the retail sales of insurance products by financial institutions. Similar protections are needed if banks are allowed to engage in real estate activities.

In addition, Congresswoman Roukema brought up the fact that we might be discussing, at some point this year, reforming the Real Estate Settlement Procedures Act and the Truth In Lending Act.

We think it is very vital that consumers have the information that they need so they can shop for loans.

Perhaps what we need to be talking about is some sort of real estate consumer bill of rights that would affect anybody participating in this marketplace. Perhaps have suitability standards when it comes to lending.

And if Congress really wants to examine how to benefit consumers, we should be talking about some of those issues during this discussion.

Simply allowing banks into the marketplace won't be the solution to a lot of the problems that consumers have today.

Thank you.

[The prepared statement of Frank Torres can be found on page 126 in the appendix.]

Chairman BACHUS. Mr. Roebuck.

STATEMENT OF JOHN ROEBUCK, CAI, AARE, CHAIRMAN OF THE BOARD, NATIONAL AUCTIONEERS ASSOCIATION

Mr. ROEBUCK. Yes. Chairman Bachus, Members of the subcommittee, I am John Roebuck, Chairman of the Board of the National Auctioneers Association, and President of John Roebuck & Association of Memphis, Tennessee.

I'm accompanied today by NAA's legislative consultant, Curtis Prins, who is a former director of this subcommittee, and who is well known by many of you.

The National Auctioneers Association is strongly opposed to the regulation issued by the Federal Reserve System and the Treasury Department, that would allow banks to engage into the real estate brokerage business.

To illustrate NAA's strong, deep concern about the proposal, I should point out that, to my knowledge, this is the first time ever that my trade association has ever testified before Congress.

We have not been here before because we believe that we should not testify unless it's something of a life-threatening nature to our industry.

The proposed regulation will most assuredly cripple, if not kill, the real estate auction business as far as companies such as mine.

Today, many of the NAA's auctioneers, 6,000 members plus or minus, conduct not only real estate auctions, but also operate traditional real estate brokerage business. All of our members are small businesses in the true meaning of the word.

In our business, we face competition from other auction firms and real estate companies. The competition that we face, however, comes from companies that do not have an unfair competitive edge. However, if the regulation goes into effect, our industry will be faced with a whole new area of competition from banks who will clearly hold an unfair competitive advantage.

Banks have access to customers' deposits and cheap loans from the Federal Government and from other banks. Real Estate auction companies, such as mine, do not. Banks have access to financial information and customer lists that they used for marketing purposes. Real estate auction companies don't. Banks have the ability to attract customers with a variety of financial incentives; real estate auction companies don't.

While I could list numerous reasons why banks will have an unfair advantage in competing with the real estate brokerage business, including auctions, I want to spend my remaining time trying to understand how the Federal Reserve and Treasury were able to put forth such a regulation.

I'm just a small businessman from Memphis, Tennessee, and like the rest of the 6,000-plus members of the NAA, I'm confused by the process that led to the real estate regulation.

I have great faith in the Members of Congress. They are elected by the people of their districts and States. They are accessible, concerned about their constituents' views and willing to listen.

On the other hand, Government agencies are not made up of a single elected person, have narrow, if any, constituencies, and are hardly accessible. Certainly, the Fed and Treasury have asked for written comments about the proposed regulation, but that does not allow groups, such as NAA, to truly express their concerns.

Perhaps the most significant question surrounding this whole issue is this. If Congress wanted banks to engage in real estate activities, why didn't it grant those powers clearly and unmistakably? Surely, if Congress intended banks to have such powers, there would be no need for this hearing today. There would be a clear record of Congress granting real estate powers to banks and probably even a recorded vote.

I ask this question of the two agencies: How many Members of Congress have sent comment letters saying that Congress, in passing the Gramm-Leach-Bliley, clearly intended banks to have real estate brokerage power. On the other hand, Congress has voted several times against allowing banks into the real estate brokerage business.

Congress passed the Glass-Steagall Act in 1933, some 68 years ago. If it took that long for Congress to decide what businesses banks should be in, is it logical that Congress would take just over a year to hand over the authority to make legislative banking powers decisions to two unelected agencies?

Mr. Chairman, I applaud you and other Members of this subcommittee who have written to the two agencies to question their actions. In your letter, you state "far-reaching and controversial financial policies should be determined through legislation, not through regulation." Those 14 words are the clearest testimony that will be heard at this hearing.

One of the tenets of President Bush's Administration is to return Government to the people. I truly hope that happens. But when the people see Government agencies legislate against a large segment of the people, then we must question if such a return is possible.

This regulation is not just to decide banking powers. It is far more than that. If this regulation is finalized, it will mean that Congress has given up two basic powers to legislate in the area of banking.

I ask you, is this what you want?

Thank you very much.

[The prepared statement of John Roebuck can be found on page 134 in the appendix.]

Chairman BACHUS. Thank you, Mr. Roebuck.

Mr. Parsons.

STATEMENT OF RICHARD J. PARSONS, EXECUTIVE VICE PRESIDENT, BANK OF AMERICA CORP., ON BEHALF OF FINANCIAL SERVICES ROUNDTABLE

Mr. PARSONS. Good afternoon, Chairman Bachus, Members of the subcommittee.

I'm Rick Parsons, an Executive Vice President at Bank of America. I am testifying on behalf of the Financial Services Roundtable.

The Roundtable is a national association representing 100 of the largest financial companies in the U.S. We are made up of 64 different banks and thrifts and a number of different insurance companies, as well as security firms and other diversified financial services companies.

The Roundtable appreciates the opportunity to discuss the proposal to permit financial holding companies and national banks to engage in real estate brokerage.

The Roundtable strongly supports adoption of the regulation for three reasons.

First, permitting holding companies to engage in real estate brokerage is good for consumers.

Second, it is good for the financial industry.

Third, brokerage is a financial activity consistent with the Gramm-Leach-Bliley Act.

We believe that the consumers will be the real winners if this regulation is adopted. The rule will increase competition in the brokerage industry. More competition means more consumer choice, can mean lower prices and better service.

The adoption of the rule is necessary to meet demand for one-stop shopping for homebuying services.

A study conducted on behalf of the National Association of Realtors indicates that three out of four homebuyers say that getting all or some of their homebuying services through one company is appealing.

The NAR study concludes that 77 percent would consider using a bank for those one-stop shopping services in future transactions.

The regulation enhances consumer privacy for brokerage customers. Customers of holding companies are entitled today to the Act's far reaching privacy protections and customers of real estate brokers currently have no Federal privacy protections.

If adopted, the regulation will afford brokerage customers the same Federal privacy protections now afforded to bank customers.

Now with regard to the threat of tying, existing banking laws, such as the Federal Reserve Act, and the Anti-Tying Statutes, are more than adequate to preclude these types of practices.

Because of these laws, a brokerage customer of a holding company will enjoy greater protection than a brokerage customer of a less regulated competitor.

Second, adoption of the regulation is prudent for the financial industry. Traditional real estate brokers are now competing with financial companies by offering financial services, such as loans and insurance.

According to the 1999 NAR profile of its real estate members, 56 percent of its members with more than 50 agents are involved in mortgage lending. Federal thrifts and credit unions as well as State chartered banks in 26 States are now permitted to act as real estate brokers.

Yet, the only financial institutions that are uniformly not allowed to engage in brokerage are holding companies and national banks.

A broker is an intermediary in a financial transaction. Banks and holding companies are permitted to conduct similar agency activities, including travel, securities, and insurance brokerage.

Real estate brokerage poses little risk to the banking system.

Finally, the Act permits the Fed to define certain activities as financial in nature, including the, "transferring for others, financial assets other than money or securities."

The Roundtable believes that real estate brokerage is exactly that type of activity. Real estate is the largest asset owned by most Americans. For many, real estate is the most significant source of wealth. Real estate is conferred special status under tax laws reflecting our Nation's recognition of real estate as a storehouse of consumer net worth.

For these reasons, we believe that real estate is a financial asset, and that brokerage is financial in nature. In determining whether an activity is financial in nature, Congress mandated that the Fed considered changes in the marketplace as well as the ability of financial holding companies to compete effectively with any company seeking to provide financial services in the U.S. This will provide parity.

We support the regulation, and believe that its adoption would be a winning proposition for consumers. The regulation will benefit consumers by enabling increased competition, more choice, and lower prices.

Thank you. I will gladly respond to any questions.

[The prepared statement of Richard J. Parsons can be found on page 136 in the appendix.]

Chairman BACHUS. Thank you, Mr. Parsons.

My first question, and I'll ask this to Mr. Burns and Mr. Parsons.

Mr. Parsons, you mention brokerage is a financial activity. Would you gentlemen give me the distinction between a financial brokerage and a commercial brokerage?

What is the distinction?

Mr. Burns.

Mr. BURNS. Mr. Chairman, there's been a lot of discussion about——

Chairman BACHUS. If you will pull the mikes up——

Mr. BURNS:——Financial activities and commercial activities. And I think sometimes there is a definite line and the issue is black and white.

Unfortunately, as in many cases in life, I think there is a grey area here. There are some types of transactions that have some of the characteristics of financial transactions and probably some characteristics of a commercial transaction.

Chairman BACHUS. Yes. I guess what I'm saying is we talk about financial brokerages and commercial brokerages. Now, are you familiar with those terms?

Mr. BURNS. No, I don't think that I am. I'm sorry.

Chairman BACHUS. Mr. Parsons.

Mr. PARSONS. Let me take a shot at that.

It's the issue, I think, of our contention that this transaction is financial in nature, and I think that's the heart of the question that the Fed and Treasury are dealing with.

The contention I think that we have is that this transaction involving a home is putting us, as an industry, the Roundtable members, as agents, as opposed to principals. Agents in that we are an intermediary in a financial transaction. We don't own the real estate.

Chairman BACHUS. Oh, I understand that. That's true of all brokerages. I mean a brokerage brokers and, you know, a financial brokerage, my understanding is it brokers paper, it brokers intangible as opposed to a tangible——

Mr. PARSONS. And commodities.

Chairman BACHUS: ——And a commercial broker brokers property, you know, whether it be an airplane or an automobile or a home.

I mean, if you say that selling, brokering a home is a financial transaction, you would say that about an automobile too, wouldn't you?

Now I'm not talking about owning a dealership; I'm talking about you could—that's a different matter—there's a distinction between owning an automobile, as an automobile dealer does, but what about a bank brokering automobiles between say the manufacturer and the public?

Or brokering fine art, or brokering anything? I mean, if we allow commercial brokerage, it would have to be on everything, wouldn't it?

Mr. PARSONS. Let me go back to something I said in my testimony, Mr. Chairman.

I noted that the financial asset of a home is conferred special tax status. I think at least, you know, in our Tax Code, there's an indication that there is something different between this asset, which is such an important source of net worth for most of us, than the other examples that you just alluded to.

And I don't know if that distinction helps, but I think that's the one that draws out, in particular, the nature of a financial.

Chairman BACHUS. Let's say that you were being allowed to broker a home or broker another item. What if you had—what if, Mr. Burns, you were a real estate broker for a piece of property that you held the mortgage for, and the mortgage was in default?

You'd list the property for sale, but you're also the banker, and you have the mortgage, you're holding the mortgage on that home, and the mortgage is in default.

Would your interests be in getting the best value, or would it be in paying off the mortgage or seeing that the mortgage wasn't in default.

I mean, do you see a conflict there?

Or what if that mortgage went into default on a piece of property, would you list property that you held a mortgage on?

Mr. BURNS. No, I wouldn't necessarily assume that there is a conflict there. Depending on the size of the mortgage and the value of the property, it could well be that we need to get every penny out of that property that we can.

Chairman BACHUS. Right.

Mr. BURNS. I do know that there are real estate laws that regulate when a broker typically is hired by the seller of the property to market the property. And there's an agency relationship created there, and it's covered by State laws that apply to real estate agents.

And I think actually that it's covered in the real estate brokerage laws. And banks, if they are allowed to be brokers, will in fact be subject to all of those State laws and regulations that brokers are now. I think that's an important point.

Chairman BACHUS. I agree.

Let me ask the realtors a question. We talked about competition, and Mr. Mendenhall, I'll ask you this, competition in the marketplace.

In my home town there are four gas stations on the corner; Texaco, Exxon, Amoco, and Philips. Is there competition?

Mr. MENDENHALL. In my marketplace, I can tell you that there is.

Chairman BACHUS. What if they are all $1.39 a gallon?

Mr. MENDENHALL. There is not going to be competition at that kind of level, but I do want to speak to the issue of competition. I think the purpose, which we all talk about——

Chairman BACHUS. Let me address that. I mean, if you have four gas stations on a corner, they're all selling gas for the same price, is that competition?

Mr. MENDENHALL. Yes, it's competition in my mind.

Chairman BACHUS. Even if they're all selling it for the same price, they all go up the same? You know, we've all seen that.

Is the 6 percent commission, which is standard in the industry, at least in Alabama, I mean is that competition?

Mr. MENDENHALL. Well, first of all, I would say that I don't know what—I can't speak for Alabama, but I can speak for my own State, and tell you that real estate commissions are highly competitive.

That in fact, in my own firm in the last 3 years, our real estate commission has dropped by 20 percent.

And then I go to the testimony that was given by the person for the consumer. Credit card fees for banks have gone up in 1 year by 7.7 percent, penalty fees by 23.1 percent, and cash advance fees by 36.7 percent.

So when somebody argues that they're going to get more market share, and that's going to make it more competitive, I just don't see that.

Right now, the financial holding companies have 44 percent of all the loan originations in the country.

I have a mortgage company in my real estate firm. I'm not trying to say that one-stop-shop is not fair. What we were trying to say, on behalf of the National Association of Realtors, is that if you're going to have it, make sure it's fair.

And that the people who are going to get into our business don't enjoy, don't have advantages that we can't also have. It is significant that they can borrow money cheaper that we can borrow it to run a real estate firm.

So in effect, even if you had, in your example, the four gas stations of everybody selling at the same price, if they can run their business at less cost than I can because of their borrowing power, they have a significant advantage of that. And I think that's very important.

Chairman BACHUS. With the number of Members we've got, what we may do is just expand the questioning to about 8 or 10 minutes.

Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

I want to express my thanks to this panel of witnesses who I think all have enlightened us in various ways, and extend a special greeting to Mr. Parsons who comes from my hometown and, works for one of the institutions that is based in my congressional district.

I come away from this hearing troubled at some level, I guess. And I think I want to address my first line of questions to Mr. Mendenhall.

Mr. Hammond, earlier today, testified that there were two rationales under which the regulators found that there was a threshold high enough to promulgate this proposed regulation.

One of those I think you can't do anything about is that some States allow banks to be real estate brokers. I guess you don't have any control over that.

But the second one is pretty well illustrated by a comment that you just made and by this Long & Foster ad over here, which is that realtors are in direct competition with financial services businesses.

And I guess I know this. To some extent, I knew it at some level, because when I came to Washington, Long & Foster was my real estate company, and they arranged the loan, and they arranged the title insurance.

But it's kind of striking to see that in an ad which says "Long & Foster, more than a great real estate company, we're also a great mortgage, title, and insurance company too." That's in the headline.

I guess I wasn't completely aware that that was going on. Is that, in fact—I mean, if there is a rational basis for the regulators doing this, it seems to me that that might be a compelling rationale, and that does seem to be sanctioned because there's something in the statute that talks about competition.

Are realtors regularly getting into the business now of mortgage, providing mortgages. This says "Prosperity Mortgage Company" is Long & Foster's company.

Are you regularly getting into the business of providing title insurance. This says “Midstate Title Insurance Agency, Inc.” is a Long & Foster company.

Are you regularly getting into the business of providing insurance. This says “Long & Foster Insurance Agency, Inc.” is the insurance provider.

Is this something that’s happening?

Mr. MENDENHALL. The answer to that is yes, real estate firms are doing one-stop-shopping. But I want to emphasize that that is commerce versus commerce, not banking versus commerce.

Mr. WATT. So this Prosperity Mortgage Company is not really a mortgage company of Long & Foster then? They’re not making loans?

Mr. MENDENHALL. They are making loans.

Mr. WATT. Well how is that not financial?

Mr. MENDENHALL. I’m not saying that that’s not financial. What I’m trying to say is that when that mortgage company makes loans, they’re not a bank; they don’t accept deposits, they don’t have the ability to do a financial transaction other than—in fact, in my company, which I can speak to the closely—half the loans we make we sell to the local bank.

Mr. WATT. All right, let me go to the other end.

Mr. Parsons, I won’t exempt him just because he’s my neighbor.

This ad points up an interesting and troubling aspect from the other end. Let’s assume that banks are allowed to get into the real estate business.

Would it be appropriate for Bank of America, for example, to have an ad like this, which says, “I can be your lender, I can be your mortgage company, I can be your realtor, I can be your insurance company, I can be your title insurance company.” I don’t think we allow you to do that in North Carolina—but, you know, would that be appropriate?

And the second step in that is, how close does that come really, what’s the distinction really between providing a convenience and providing a tie?

I know there’s a legal distinction, but in the consumer’s mind—and maybe we can get Mr. Torres to comment on this too—in the consumer’s mind, can a consumer really distinguish, when he’s in a hurry, trying to get a real estate transaction closed, moving, on the move, got nine million other things, how do we distinguish between what is a convenience and what is really a tie when an ad like this is what we’re responding to.

Mr. PARSONS. Two questions. Let me take the first one.

And I think as you would expect, Mr. Watt, I would say, yes, Bank of America and all the members of the Roundtable should be entitled to have the same opportunity as the company mentioned, you know, in your comment, to be able to talk about convenience, one-stop shopping.

To your second question, specifically that that fine line perhaps between the tying and the real element of choice for the consumer, I really think there are several distinctions there, not the least of which are clearcut laws that are in place today around anti-tying.

And I think second, is——

Mr. WATT. Are realtors subject to those same laws?

Mr. PARSONS. No, they are not.

Mr. WATT. So if Long & Foster's mortgage insurance company mortgage company wanted to direct me there, Long & Foster could direct me there?

Mr. PARSONS. I'm not sure I understand your question.

Mr. WATT. If Long & Foster's agency wanted to direct me to Prosperity Mortgage Company, Long & Foster Mortgage Company, would they have the legal authority to do that?

Mr. PARSONS. Well, I'm not a lawyer so I'm not sure that I could answer that specific question. I'd be happy to get some advice on that one.

Mr. WATT. Mr. Torres will tell us quickly here.

Mr. TORRES. It's hard for consumers to comparison shop. And one thing in today's marketplace, and it's not going to get any easier if this idea of one-stop-shopping, you know, perhaps evolves in a way that consumers really aren't benefiting.

How do you shop for a mortgage today if you want to shop for the interest rate, because it always changes. You can't fix it unless you plunk down a lot of money to make it stable so that you can go to Bank of America and say, "Hey, I'm getting a 6 percent loan from Long & Foster, can you beat that?"

The marketplace isn't set up that way today, so it's very difficult for consumers.

Mr. WATT. But people are at least attuned to shopping for interest rates. I don't know that there's anybody that's really attuned to shopping for a title insurance company.

The premiums are essentially the same, going back to the Chairman's question, is competition, competition, competition. If the price is the same for a title insurance policy, regardless of whether you get it in the bank or get it at the real estate company, aren't you always going to get it from the place that's most convenient, and isn't that always the first person to grab a hold on you and that might be the realtor, it might be the lender.

In some cases, because I've gone and tried to—my experience is that it was seldom the lawyer, the lawyer got kind of, you know, cut out of the equation, although every once in a while, my clients would insist that a lender use the lawyer that he wanted to use, rather than the lawyer that the bank wanted to send him to.

I mean, there's a lot of implicit tying going on in here that I'm troubled about, I would have to say from the realtor perspective and from the lender perspective. And I'm even more troubled—I guess that's why I'm troubled at the end of this hearing—because I'm not sure I realized that realtors were doing all this, or at least had the legal capacity to do it all, and were permitted to do it all.

But I'm not sure that I would consider that necessarily a compelling rationale, just because somebody else is doing something that I don't like, to say OK, somebody else in the industry ought to be able to do something I'm not going to like either. As my mom used to say, "Two wrongs have never made a right" in my opinion.

But this is a difficult area. And I'm going to wrap up, Mr. Chairman. I know I'm over my time.

I just, I'm troubled by this ad, and I'd be even more troubled, I'd have to say, if a bank were able to do the same ad, because I really do not think that consumers really are in a position to go through in this process, in a real estate process. I know how complicated they are. That's why I've always thought all this RESPA stuff was heavy-handed, because even after you get it, nobody understands it.

The lawyers don't even understand it, you know.

But I don't think people are going to go through and shop for any of this stuff. The first person that gets ahold of them, is going to have a captive audience.

That's basically what we are creating here I think.

Mr. Burns is anxious to respond to me.

Mr. BURNS. Well, personally in response to your initial question, Congressman, and it's an excellent one. Actually, under the Real Estate Settlement Procedures Act, it requires any mortgage lender, whether they are affiliated with a realtor or with a bank, that if we have an affiliation with somebody where we're providing the property insurance on the property or title insurance, that has to be disclosed.

It has to be disclosed on a separate piece of paper and acknowledged by the customers, so customers are made aware of that.

Mr. WATT. But you know, Mr. Burns, let me be clear. That's going to take place in a lawyer's office after the whole transaction has been approved and you had a closing, and the lawyer's going to stick a piece of paper under your nose and say, "Sign it."

You know, I like to tell this story, and I'm going to quit, Mr. Chairman. It was only one real estate closing that I ever had where anybody ever got up and walked out of it. And they came back the next week. That's when we actually disclosed the annual percentage rate and the wife looked at the husband and said, "I'm not signing this."

And he begged her for an hour in the middle of the closing, "Please sign the documents, honey." And then next week, I guess, I don't know what he did for her over the weekend, maybe he gave her some flowers or something, but nobody's going to walk away from a closing at that point. It's just not going to happen.

So I mean, I hear what you're saying, but I've been there and I've done this. And I know it just is not going to happen. Nobody's walking away from a closing because all of a sudden they realize— I wouldn't have walked away from the closing, if I realized that Prosperity Mortgage, I don't know whether that was the company they were using, was affiliated with Long & Foster. I thought I had a reasonable rate, you know.

But the first person who got a hold on me in Washington happened to be a Long & Foster agent. They were in control of that transaction, and I'm a Member of Congress. Now, imagine, and I've done this for 22 years, leading up to this.

Now imagine somebody who has never been involved in the real estate business, a regular consumer, so to speak, and you've multiplied my confusion times one hundred, I guess.

But maybe we can't solve all of these problems.

Chairman BACHUS. You owe me about 10 minutes.

[Laughter.]

Chairman BACHUS. Thank you, Mr. Watt.

Mr. Bentsen.

Mr. BENTSEN. Thank you. Actually I think he owes me about 10 minutes.

First of all, I think the answer to the second question, Mr. Parsons, would be price. And I think Mr. Torres that at least for some sectors of the public, there is greater transparency.

But I would agree that for other sectors, particularly lower income sectors, the transparency has not existed where there is sufficient competition.

But I want to go back to the Long & Foster example that is given, and I think we need to clarify some points.

There's nothing under the law, prior to or since the passage I think, of Gramm-Leach-Bliley, that would preclude a separate company, a non-banking company from engaging in mortgage banking, or establishing a mortgage finance company, or any other type of finance company.

And it is a little unrealistic I think to compare Long & Foster or some other company to a financial institution, primarily because Long & Foster, to my knowledge, does not have access to the discount window, it doesn't have access to the Federal Home Loan Bank system.

Their mortgage company does have access to the other GSEs, Fannie and Freddie, but so to the banks and thrifts through their mortgage banking operation.

So there is I think that distinct difference.

The other thing, and I don't know the answer to this, but I think it is unlikely that these mortgage finance companies are taking down the loans for their own account. And quite frankly, I don't think the banks are taking too many loans down for their own account either, maybe more so now than they have in the past, but most of these are going into the secondary market and into some form of mortgage-backed securities.

So I think we need to be certain that there are those differences.

The question I want to get to, and why I stuck around, because I kind of figured out what everybody was going to say beforehand, is what Mr. Parsons brought up, and I would like you to expand on this.

You did actually as I was writing down the question, you started to talk about it in your testimony. And I think the two issues at play here, and I'm only going to ask you about one of them, what was our intent, and I'm sure you can find varying opinions with respect to that.

The second issue, I think, is whether or not the regulators would have authority to expand the powers as such under the Gramm-Leach-Bliley for financial holding companies, that was otherwise expanded by legislation for thrifts under the Thrift Charter. And I'm sure there are varying opinions on that, and we won't resolve that issue; somebody else will across the street.

But the third issue, which I think we may or may not address, but if not us, the nine people across the street may address ultimately is whether or not real estate is a financial asset under the law.

I'm not sure, based upon what you said, that you really fleshed it out enough for my interpretation, and I would add to that, and this sort of goes back to what my colleague, Mr. Watt, was saying about when he came to Washington, and goes to the realtor and they say, “Oh, you can finance, you can get your mortgage us through us here and this through this here.”

I mean, I went to buy a car the other day, and like every time I’ve bought a car, when you sit down to sign, to close the deal, they say “How are you paying for this, and are you going to finance this, or are you paying cash?”

Did you know we have some really good financing options that are available through, I won’t say which company, because I don’t want it to appear that I have some preference for one car versus the other or some car company because of our esteemed position here. But the fact is that I’m not sure that automobiles are, in and of themselves, a financial product.

Automobile finance is a financial product, but automobiles are not. And I’m not sure that that same line of thought does not follow through to a piece of real estate.

And while real estate, like other assets, can be used as a pledge, I’m not sure that it’s necessarily considered legal tender, I’m not sure that it’s necessarily considered the type of liquid asset that is easily tradeable, and so I’m curious in more detail where you believe it actually would be defined as a financial asset.

Mr. PARSONS. Thank you. A couple of thoughts on that one.

You made a good point about real estate being used as a pledge, and I think that is an element of at least part of that discussion.

And to expand on this notion of financial in nature, there are some related comments that are part of this existing Act, and that is such words as “complementary” or “incidental” to activities that are financial in nature.

And to expand on that a little bit, if you look at the kind of activities that Gramm-Leach-Bliley allow banks and financial holding companies to currently do today, you have a role of finding that we can play; appraisal, title insurance, property and casualty insurance, loan brokerage, lending, closing, and escrow.

And I think, you know, as you said earlier, that maybe this is one that will be, you know, debated in other forums as well.

But in our review of this, what I think we conclude is that these activities collectively plus the fact that it is an asset that is so important and is probably the most important one to most Americans, collectively convert that into being a financial asset, at least part of this discussion.

Mr. BENTSEN. The only thing I would say is, I’m not sure, I mean, escrow, closing, any of those, those are complimentary to any financial transaction and involve the movement of cash or other fungible assets like that.

But that is true whether it’s involving real estate, residential or commercial real estate, whether it is involving some other asset, whether it is involving a merger or an acquisition.

So I am not sure that they are on equal footing.

Insurance, and believe me, I’ve got the scars from going through the insurance battles here, and I do think that insurance, in general, is a financial asset. I think that was well-proven.

But again, I’m not sure, I mean, is jewelry a financial asset? Because jewelry can be used as a pledge.

Somebody brought up fine art, and I know one of the institutions some years back tried to create a fine art index. It didn't work very well; it got caught in the bubble of the 1980s.

But is fine art a financial asset or not? It certainly has value and has been used, in some cases, for a pledge.

So I think, and I won't push you on this, but I do think that's a burden that you all have to overcome and I'm not sure the case has been made there.

Mr. PARSONS. At the risk of repeating what I said to Chairman Bachus, there is one other distinction, and that is the treatment under the tax laws. And I think that does raise, you know, another element of question as to what that means in this discussion.

Mr. BENTSEN. Well, some of the economists tell us that the treatment of the tax laws is built as an incentive to enhance homeownership, and again, I guess you can look both ways. We also have tax incentives for people to save. We're debating a bill to enhance those tax incentives for people to save right now.

But again, I'm not sure that the nexus is there.

Thank you, Mr. Chairman.

Chairman BACHUS. Thank you. There are no other questions?

I appreciate your attendance.

Let me say this. The one thing that I would say to the realtors that I do consider that you may be walking uphill, and the reason for that is competition, you know, to understand America is to understand competition.

I think we have a free market philosophy. Competition is what normally, most effectively at the cheapest cost, delivers goods and services to the American people.

I think we've found, through all our experiences, that competition normally is a good deal for the consumer, for the American public.

I think the question here is, is it unfair competition.

Mr. MENDENHALL. Exactly.

Chairman BACHUS. I will tell you that the other problem is you do have—you've got Long & Foster, you've got Century 21, you've got Federal Thrift, you've got Federal Savings & Loan, and you have State chartered banks in I don't know, maybe it's four States, getting into the market.

It is unfair to allow everyone but the banks into this market and allow other financial institutions into the market. And we are moving in that direction.

If there's anything that the Fed can say, they can say that the marketplace is moving in that direction.

I think, from your standpoint, you're going to have to find where it is unfair, it is bad for the consumers, and I think that ought to be where your focus is.

Because it is a brokerage, as opposed to an ownership, I am not sure that you even believe it is going to threaten the banking institutions, because if they get in the business and they do not make a profit, they will be out of the business. So, you know, I think we almost assume that they will be profitable. If they are not, they will either take themselves out of the business or the regulators will take them out.

Now we have all heard all of this about Japan, but in Japan, it was unwise banking practices, just as well as getting involved in commerce. It is an over-simplification to say they got involved in commerce and that is what pulled them down. They did a lot of things that they would not be permitted to do here under our banking laws.

This concludes our hearing. Thank you.

[Whereupon, at 1:03 p.m., the hearing was adjourned.]

A P P E N D I X

May 2, 2001

**OPENING STATEMENT OF REP. SPENCER BACHUS
MAY 2, 2001 HEARING ON PROPOSAL TO PERMIT BANKS TO ENGAGE IN REAL ESTATE BROKERAGE AND MANAGEMENT**

The Subcommittee meets today to continue the important work of overseeing implementation of the historic Gramm-Leach-Bliley financial modernization legislation enacted during the last Congress. Last month, in collaboration with the Capital Markets Subcommittee, we reviewed rules promulgated by the Federal financial regulators governing merchant banking operations authorized by Gramm-Leach-Bliley. This morning, we will consider a recent proposal by the Federal Reserve Board and the Treasury Department to permit financial holding companies and financial subsidiaries of national banks to offer real estate brokerage and real estate management services.

Title I of Gramm-Leach-Bliley allows financial holding companies and banks, through financial subsidiaries, to engage in a broad range of activities that are considered "financial in nature" or incidental or complementary to such financial activities. Among those "financial" activities specifically enumerated in the statute are banking, insurance and securities. Title I also authorizes the Federal Reserve and Treasury Department to define additional activities that they deem to be financial in nature or incidental to such activities, and therefore permissible for financial holding companies and financial subsidiaries.

On January 3^{rd} of this year, the Federal Reserve and the Treasury published in the *Federal Register* a proposed rule that would add real estate brokerage and real estate management to the list of activities considered financial in nature or incidental to financial activity. The proposal established a March 2, 2001, deadline for public comment.

Out of a belief that two months was simply not enough time for considered review of a proposal with potentially far-reaching consequences for consumers and providers of real estate services, I wrote to the regulators on February 1^{st} urging them to extend the period for public comment. On February 21^{st}, the Federal Reserve and Treasury announced a two-month extension of the comment period, until May 1st. With the expiration of the public comment period yesterday, the regulators must now begin the laborious task of reviewing and analyzing what I am told has been a heavy volume of written comments to determine how to proceed with their proposal.

My hope is that by holding today's hearing, this Subcommittee can play a constructive role in the deliberative process in which the regulators are currently engaged. In addition to giving Members an opportunity to make the regulators aware of congressional concerns with the proposal, the hearing will provide a forum to a broad cross-section of affected industry and consumer groups, some of whom strongly support the proposed rule and others who just as adamantly oppose it.

My own reservations about the proposed rule are two-fold. First, I believe that wholesale entry of banks into the real estate business – while not in and of itself undermining safety and soundness – may serve to erode the long-standing separation between banking and commerce that Congress most recently reaffirmed in the Gramm-Leach-Bliley Act. Second, I have concerns about whether the statutory criteria that are supposed to guide the regulators' determination of what activities are financial in nature or incidental to such activities have been properly applied in this instance.

I recognize, however, that there are strong views on both sides of this issue, and that legitimate arguments can be made for permitting banks to offer real estate-related services. Certainly, the fact that some depository institutions, including Federally chartered credit unions and thrifts – as well as State-chartered banks in a number of jurisdictions – are authorized to engage in real estate activities while others are legally barred from doing so raises issues of competitive equity that should be addressed.

Before recognizing the Ranking Member for an opening statement, I want to welcome our witnesses to today's hearing, and remind both them and Members that because of the hearing scheduled for 2:00 in this room, the Chair will be strictly enforcing the five-minute rule on oral testimony and Member questioning.

Mrs. Waters, you are recognized.

**OPENING STATEMENT OF
CONGRESSMAN PAUL E. KANJORSKI
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT**

**HEARING ON THE PROPOSED RULE ON
REAL ESTATE MANAGEMENT AND BROKERAGE SERVICES
ISSUED BY THE FEDERAL RESERVE BOARD AND
THE DEPARTMENT OF THE TREASURY**

WEDNESDAY, MAY 2, 2001

Mr. Chairman, as part of the 1999 law to overhaul and modernize our nation's financial services industry, we created a framework that prohibits the mixing of banking and commerce, but which permits financial institutions to engage concurrently in banking, insurance, and securities activities. During our lengthy considerations of this groundbreaking law, I strongly supported maintaining the firewalls separating the financial and commercial sectors.

To underscore our concerns about the integration of banking and commerce activities, Congress in the 1999 law also specifically banned financial institutions from entering real estate development and investment services. Although real estate management and brokerage also represent non-financial, commercial activities, in one of their first acts of interpreting the Gramm-Leach-Bliley Act, the Federal Reserve Board and the Treasury Department unfortunately issued a proposed rule that would allow national bank holding companies and their subsidiaries to engage in these pursuits.

Upon learning about the proposed rule, I joined with the Chairman of our Subcommittee in sending a letter to Federal Reserve Board Chairman Greenspan and Treasury Secretary O'Neill to express my deep concerns. As I understand, at least 33 other Members of our Subcommittee subsequently either signed onto the Bachus-Kanjorski correspondence or sent their own letters to the regulators on the rulemaking proceeding. In other words, about three-quarters of the Members of our Subcommittee have already expressed doubts about this regulatory initiative. To their credit, the Federal Reserve and Treasury Department responded to these congressional inquiries by prolonging the comment period from the start of March until the beginning of May.

Today's hearing will help better the regulators' understanding our specific concerns as they work to evaluate the more than 40,000 comments they received on the real estate management and brokerage rule, and to appropriately revise -- or perhaps even withdraw -- the proposal. If the agencies fail to deliberate on this issue judiciously, Congress may find itself again considering legislation designed to close the loopholes created by their regulatory excess. It is therefore my sincere hope that the agencies' experts will take a long, hard, and serious look at the comments they received and listen carefully to their congressional critics as they work to modify and modulate their preliminary approach to this issue.

Finally, Mr. Chairman, in addition to examining the proposal's effects on banking and commerce, I would encourage the regulators to also examine the rulemaking's social ramifications. Creating bigger institutions will not necessarily result in better services and better communities. Even if this proposal could in the short run initially result in saving consumers a few basis points, it would in the long run decrease competition and stifle the important community leadership provided by our nation's realtors. Our regulators should therefore move forward cautiously in this area in the upcoming months.

Statement of Congresswoman Sue Kelly House Committee on Financial Services Subcommittee on Financial Institutions Hearing on the Proposal to Permit Financial Holding Companies and Financial Subsidiaries of National Banks to Offer Real Estate Brokerage and Management Services

Wednesday, May 2, 2001 at 10:00 a.m. in 2128 Rayburn

Thank you Chairman Bachus and Ranking Member Waters for agreeing to hold this hearing today on the issue of allowing financial holding companies involvement in real estate activities.

In Gramm-Leach-Bliley we gave discretion to the Fed and Treasury to determine what kind of activities are financial in nature. In January the Fed and Treasury published a proposal to allow the financial subsidiaries of banks to engage in real estate activities. This proposal raises a number of questions about how an activity is determined to be financial in nature and now we have a number of questions for the Fed and Treasury about this proposal.

My number one concern when banks engage in new activities is the risk to taxpayer funds insured by the FDIC. While it can be argued that many view real estate as an investment, I have long been wary of the mixing of commercial activities and banking. Banks serve a critical role in our economy, one that must guarantee the safety of consumer and business deposits. Any new activities considered for banks must ensure maximum protection of deposits. Today I hope to discover how much consideration the Fed and Treasury gave to these concerns.

I want to thank our witnesses for taking the time out of their busy schedules to share their thoughts with us and I look forward to discussing these issues with you all. My questions will be straight forward and seeking to gain a better understanding of the assessments made of the risks involved in the different facets of real estate activities addressed in this proposed rule.

Opening Statement

Chairman Michael G. Oxley

Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit
May 2, 2001

Hearing on the Federal Reserve and Treasury proposal to permit banks to offer certain real estate services

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Thank you, Mr. Chairman.

Good morning, and welcome to Governor Meyer, Under Secretary Hammond and the other witnesses.

As Mr. Bachus indicated in his statement, the Federal Reserve Board and the Treasury have acted deliberately and thoroughly in their handling of this proposal. I commend Chairman Bachus for holding this hearing and giving this subcommittee an opportunity for the Fed and Treasury to discuss further the issues raised in their proposal.

This issue, like so many others, must be viewed in the context of the Gramm-Leach-Bliley debates that have led to this hearing. Those debates, while contentious, resulted in a law that passed the Congress by an overwhelming margin and with strong bipartisan support. As I consider this proposal, I ask myself two questions:

First, is it consistent with the Gramm-Leach-Bliley Act?

Second, does it promote fair competition within the financial services industry?

Generally, corporations may engage in any lawful activity. However, financial holding companies, and financial affiliates of national banks, may engage only in activities authorized under the Gramm-Leach-Bliley Act.

Gramm-Leach-Bliley significantly expands the activities of financial holding companies beyond the activities permissible at that time for bank holding companies.

When we wrote the list of activities that are "financial in nature" into the statute, we tried to incorporate all existing activities of the banking, securities and insurance industries without authorizing the complete mixing of banking and commerce. At the same time, we recognized there might be activities we failed to include.

To address this possibility and the need for the industry to evolve over time, we created a specific process to allow the Fed and Treasury to periodically update the list of activities that are "financial in nature" or "incidental" to such activities.

This proposal represents the first significant application of the process we created. Striking a balance between the separation of banking and commerce and the promotion of competition is never an easy task.

For years, I watched the insurance, securities and banking industries battle each other to protect themselves from competition. Those efforts continue to this day, most recently by opposition to the repeal of the 70-year-old ban on the payment of interest on business checking accounts. But there continues to be broad agreement in Congress that our financial services laws must be updated on a regular basis to account for changes in the market place and to foster fair competition.

It takes courage for an industry to adapt to a new regulatory structure, particularly when that structure creates many new competitive opportunities. Competition, however, ultimately makes the industry stronger because it forces the industry to meet new challenges, and to provide more and better services for consumers. I have seen the positive impact that the competition between these former adversaries has had for both consumers and the overall safety and soundness of the financial services industry.

At the same time, competition must be fair, with adequate consumer protections against tying or other coercive practices.

I agree with the Treasury Department that, in moving forward on this proposal, the regulators must work closely together to ensure that this and other rulemakings under the "financial in nature" authority are consistent with the criteria and legal process Congress prescribed and the public interest.

I have confidence that the Fed and Treasury will discharge the duties entrusted to them by Congress in the Gramm-Leach-Bliley Act, and look forward to a spirited discussion of their proposals this morning.

Thank you, Mr. Chairman. I yield back the balance of my time.

Statement by
Congresswoman Marge Roukema
Joint Federal Reserve-Treasury rule proposal
Real Estate Brokerage
Subcommittee on Financial Institutions and Consumer Credit
May 2, 2001

I appreciate the Chairman holding this important hearing today and want to thank the witnesses for agreeing to testify on the joint federal reserve-Treasury proposal to allow financial holding companies and financial subsidiaries of national banks to engage in real estate brokerage and real estate management under the Gramm-Leach-Bliley Act. I would also like to specifically associate myself with the issues raised in Chairman Bachus's opening statement.

This proposal has generated a great deal of controversy. That alone may warrant a second look by Treasury and the Federal Reserve at this proposed rule. While I believe that Gramm-Leach- Bliley provides the mechanism for the Federal Reserve and Treasury to consider such a proposal, I question whether they have done sufficient due diligence in considering the ramifications of the proposal. I specifically intend to examine with great detail whether this proposal is legally consistent with Gramm-Leach-Bliley and the firewalls we instituted to assure safety and soundness and separation of banking and commerce.

Additionally, as Chair of the Subcommittee on Housing, I am particularly interested in the effect that this proposal will have on the applicability of the Real Estate Settlement Procedures Act (RESPA). RESPA regulates the relationships, the procedures and payments in the real estate transaction. The lender already has the ability to mandate certain settlement services, i.e. appraisal, credit reports, attorneys. If real estate brokerage is under control of the bank, it could result in an inappropriate concentration of power, reducing the consumer's ability to comparison shop, and potentially higher costs. This was the scenario RESPA was intended to prevent. While I believe it is time to reform RESPA and have made reform a priority for my Subcommittee, it is unclear whether the agencies have adequately reviewed this proposal as it relates to RESPA and whether it meets the test provided in Gramm-Leach-Bliley Act.

I am anxious to hear the testimony today and hope that you will be able to answer some of the questions that I have regarding this proposal.

Statement of

Laurence H. Meyer

Member

Board of Governors of the Federal Reserve System

before the

Subcommittee on Financial Institutions and Consumer Credit

Committee on Financial Services

United States House of Representatives

May 2, 2001

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on behalf of the Federal Reserve Board with respect to the joint proposal by the Board and the Secretary of the Treasury relating to real estate brokerage and management. The proposal is an invitation for public comment on whether the Board and Treasury should find that real estate brokerage and real estate management are activities that are financial in nature or incidental to a financial activity, and hence permissible for financial holding companies and financial subsidiaries of national banks. The agencies published the request for comment on January 3, 2001. Because of the significant public interest in the proposal, we extended the public comment period through May 1, 2001.

To help understand why the agencies requested comment on this proposal, I think it would be helpful to outline the legal framework established by the recently enacted Gramm-Leach-Bliley Act ("GLB Act"), and the basis for the proposal. The GLB Act amended the Bank Holding Company Act to allow a bank holding company or foreign bank that qualifies as a financial holding company to engage in, and affiliate with companies engaged in, a broad range of financial activities. The activities specifically authorized by statute include lending; insurance underwriting and agency; providing financial advice; securities brokerage, underwriting, and dealing; and merchant banking activities.

In addition, the GLB Act permits financial holding companies to engage in other activities that the Board determines, in consultation with the Secretary of the Treasury, to be "financial in nature or incidental to a financial activity." The GLB Act includes this flexibility because Congress recognized the practical difficulties of comprehensively defining in legislation a complex concept like financial activities for a financial marketplace that is continually evolving. Further, the act allows financial holding companies to engage in other activities that the Board determines are "complementary" to a financial activity and would not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally. Complementary activities are non-financial activities that are related to or complement financial activities. Congress considered, but did not enact, a provision that would have allowed the more general mixing of banking and commerce.

The real estate brokerage and management proposal is one of several initial proposals by the Board and Treasury relating to the definition of activities that are financial in nature or incidental or complementary to financial activities under the GLB Act. The first of these proposals (which the Board recently finalized) related to acting as a so-called "finder." Finder activities, which generally are permissible for banks to conduct directly, involve putting buyers and sellers together in transactions negotiated by the buyers and sellers themselves. The second of these proposals involved defining three types of activities that Congress determined as a general matter to be financial, but required the Board to define more specifically -- including safeguarding and transferring financial assets and facilitating financial transactions for third parties. The third proposal requested comment on whether the Board should determine that certain types of expanded data processing activities are complementary to financial activities.

With each of these proposals, the Board and, for the financial activity determinations, the Secretary of the Treasury, are exploring a new standard for defining permissible activities. The GLB Act establishes certain factors that the Board and Treasury must consider, but it otherwise leaves the agencies with significant discretion and very little guidance regarding what is and what is not a financial activity.

The factors that the agencies must consider are very broad. For example, in determining whether an activity is financial in nature or incidental to a financial activity, the agencies must consider whether the proposed activity is necessary or appropriate to allow a financial holding company to compete effectively with any company seeking to provide financial services in the United States, efficiently deliver financial information and services through the use of technological means, or offer customers any available or emerging technological means for using financial services. In addition, the agencies must consider changes or reasonably expected changes in the marketplace in which financial holding companies compete, as well as changes or reasonably expected changes in the technology for delivering financial services. Finally, the statute requires that the Board consider the unspecified but wide-ranging purposes of the Bank Holding Company Act and the GLB Act, which opens up consideration of other matters beyond those on the statutory list. These statutory factors do not provide the Board with a facile decisionmaking formula for determining whether an activity is financial in nature or incidental to a financial activity.

One thing that is clear is that Congress intended the "financial in nature" test to be broader than the previous test for authorizing new activities for bank holding companies under the Bank Holding Company Act. Before passage of the GLB Act, bank holding companies were permitted to engage only in activities that the Board determined were "closely related to banking." The closely related to banking test was tied to the activities of banks. In considering whether an activity was closely related to banking, the courts focused on three factors: (i) whether banks conduct the proposed activity, (ii) whether banks provide services that are operationally or functionally similar to the proposed services, and (iii) whether banks provide services that are so integrally related to the proposed services as to require their provision in a specialized form. The text and legislative history of the GLB Act indicate that Congress intended the new "financial or incidental" standard to represent a significant expansion of the old "closely related to banking" standard.

The GLB Act neither specifically authorizes nor specifically forbids financial holding companies or financial subsidiaries of national banks to engage in real estate brokerage and management activities. While the GLB Act and its legislative history do not contain any direct evidence of congressional intent with respect to real estate brokerage and management activities, the statute's prohibition on financial subsidiaries engaging in real estate investment and development is indirect evidence of legislative intent. The existence of this limited real estate provision in the GLB Act suggests that Congress thought about real estate activities in connection with the act and determined to leave unresolved the question of whether financial holding companies or financial subsidiaries should be permitted to act as real estate brokers or managers.

Soon after passage of the GLB Act, three trade associations -- the American Bankers Association, the Financial Services Roundtable, and the New York Clearing House Association -- asked the Board and Treasury to determine that real estate brokerage activities are financial in nature. The American Bankers Association also asked the agencies to define real estate management activities as financial in nature.

The Board and Treasury responded to these requests by seeking public comment on the proposal. We have found the public comment process to be a useful means of gathering information from experts, practitioners, and analysts with an understanding of the relevant issues and activities. We recognize that, hard as we regulators try to foresee and address potential issues raised by our regulatory actions, we can benefit from the information and thinking of others. Our final rules often include significant modifications as a result of the comments we received on the proposed rules.

In this spirit, we sought public comment on the real estate proposal. During the comment period, the public had an opportunity to present views on the merits of determining whether real estate brokerage and management activities should be deemed to be financial in nature or incidental to a financial activity.

As I indicated earlier, the comment period on the proposal closed only yesterday. I can, nevertheless, give you a flavor of the arguments made by commenters.

Commenters in favor of the proposal, most notably bank and financial services trade associations at this point, have presented a variety of arguments in support of finding that real estate brokerage is a financial activity. First, these commenters argue that real estate brokerage activities are financial in nature because some depository institutions, including thrifts (through service corporations) and some state banks, already engage in real estate brokerage. Second, these commenters argue that banks have expertise in these activities because national and state banks have long been involved in brokering real estate assets that are acquired through the foreclosure process or that are part of trust estates. Third, commenters in support of the proposal argue that bank holding companies and their subsidiaries engage in virtually every other aspect of real estate transactions, including mortgage lending, holding bank premises, making community development real estate investments, performing real estate appraisals, providing real estate settlement and escrow services, providing real estate investment advice, and providing title insurance, private mortgage insurance, and homeowner's insurance. This indicates, in the view of these commenters, that real estate transactions are financial transactions and, consequently, that brokerage of real estate is a financial activity. Moreover, these commenters contend that real estate brokerage is simply a specialized form of another permissible financial activity -- acting as a finder -- and a more general form of a permissible banking activity -- assisting third parties in obtaining commercial real estate equity financing.

As I noted earlier, in determining whether an activity is financial in nature or incidental to a financial activity, the GLB Act specifically instructs the Board to consider whether the activity is necessary or appropriate to allow a financial holding company to compete effectively with any other financial services provider operating in the United States. In this regard, commenters have provided evidence that a number of diversified financial firms provide real estate brokerage services in addition to more traditional banking, securities, and insurance services. These commenters also asserted that buyers and sellers of real estate are increasingly looking to a single company to provide all of their real estate-related needs.

Some commenters also argue that real estate is a financial asset and that, therefore, brokering real estate is a financial transaction. These commenters assert that real estate brokerage is permissible as part of the statutorily listed financial activities permissible for financial holding companies. The GLB Act authorizes financial holding companies to engage in exchanging, transferring, or safeguarding financial assets and arranging, effecting, or facilitating financial transactions for others.

Some of the same considerations that support a finding that real estate brokerage activities are financial in nature also were presented by commenters as support for a similar determination on real estate management. Thrift service corporations are authorized to engage in general real estate management, and banks have acquired some experience in managing real estate in their trust departments and with respect to assets acquired through foreclosure. In addition, many aspects of real estate management are similar in nature to existing banking activities. For example, collecting rental payments; maintaining security deposits; making principal, interest, tax, and insurance payments; and providing periodic accountings are functionally similar to collecting loan or lease payments, disbursing escrow payments, and performing related accountings.

Although some of the comments favor the proposal, the vast majority of the comments have been submitted by individual real estate agents opposed to the proposal.

Commenters have raised the following principal objections to the proposal. First, some commenters claim that real estate brokerage and management are commercial activities and that authorizing real estate brokerage activities would inevitably lead to authorizing financial holding companies to negotiate and broker the sale of any type of asset. These commenters contend that authorizing financial holding companies to engage in the activities would violate the spirit of the GLB Act, which maintained a separation between banking and commerce. These commenters also argue that real estate brokerage activities are different from the finder activities permitted for banking organizations because an integral part of real estate brokerage activities is the negotiation of a contract between the buyer and seller -- a level of involvement in the transaction that has not been permitted to banking organizations acting as a finder.

In addition, some commenters draw attention to various forms of conflicts of interest that may result from allowing banking organizations to engage in real estate brokerage or management. In particular, these commenters express concern that financial holding companies acting as buyers' brokers may pressure or require buyers to use the financial holding company's mortgage product (to the exclusion of loans from other lenders) or may fail to refer buyers to other lenders who might have more competitive mortgage products. A financial holding company acting as a seller's broker also may favor the buyer over the seller because the company also is providing a mortgage loan to the buyer or is attempting to sell another financial product to the buyer.

Other commenters question the ability of banking organizations to broker real estate with the same level of competence, alacrity, and personal service as independent real estate agents. Many commenters warn that allowing banking organizations to act as real estate brokers would lead to bank domination of the field, in part because banking organizations providing real estate brokerage services would have an unfair competitive advantage over independent real estate agents due to the ability of banks to raise low-cost FDIC-insured deposits. Under this line of argument, the proposal would result in an increased concentration of power in the financial services industry, a decrease in the competitiveness of the market for real estate brokerage services, and job losses for a large number of independent real estate agents. Finally, commenters argue that allowing banking organizations to enter into the real estate brokerage and management businesses would pose risks to the safety and soundness of the nation's depository institutions.

Many of the commenters opposed to the proposal focus on whether real estate brokerage is a financial activity. If one accepts their contention that brokering real estate is really a commercial activity, the question can then be raised whether real estate brokerage should be permitted as an activity that is "complementary to a financial activity." As I noted earlier, this complementary category was included in the GLB Act to allow financial holding companies to engage in activities that are themselves commercial activities but that also are related to or complement financial activities.

Many of the points raised by commenters opposed to the proposal certainly would be relevant to an analysis under this "complementary" standard, which requires the Board to find both a connection to a financial activity and that the complementary activity would not pose a substantial risk to depository institutions or the financial system and would result in net public benefits. Because the agencies received requests to define real estate brokerage and management activities as "financial in nature," that is the proposal on which the agencies have sought public comment.

These are difficult issues, and both sides feel very strongly about their position. While we do not relish being in the middle, we believe that a debate on these matters is the best way to identify and sort through the issues and to reach an informed decision, and is precisely the type of debate envisioned in the GLB Act.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

TESTIMONY OF
TREASURY ACTING UNDER SECRETARY DONALD V. HAMMOND
BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
OF THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

May 2, 2001

Chairman Bachus, Ms.Waters, and Members of the Subcommittee, I appreciate the opportunity to appear here today to discuss the joint Federal Reserve-Treasury rule proposal on whether to permit financial holding companies and financial subsidiaries of national banks to engage in real estate brokerage and real estate management under the Gramm-Leach-Bliley Act.

The four-month public comment period for this proposal ended yesterday. Based on the substantial number of comment letters that the Treasury and the Federal Reserve Board have received, there clearly is wide public interest in this proposal. We received comments from several of the Members and witnesses at today's hearing and note that the hearing transcript will be made part of our rulemaking record. We will carefully review the issues raised by all the commenters.

Because the rulemaking is pending, I will not be able to discuss the Treasury's views on substantive issues involved in making a final decision about the proposed rule. Instead, my prepared remarks will briefly describe the process and factors we considered in making the proposal and where it stands today.

By way of background, let me begin by highlighting the key provisions of the Gramm-Leach-Bliley Act that relate to the rulemaking.

Rulemaking Provisions of the Gramm-Leach-Bliley Act

At its core, the Gramm-Leach-Bliley Act (the Act) stimulates greater competition and innovation in the financial services industry. At the same time, the legislation promotes consumer protection and safety and soundness, and restricts the mixing of banking and commerce.

To accomplish these outcomes, the Act amended the National Bank Act to allow national banks to control qualifying "financial subsidiaries" that are permitted to engage in certain activities that national banks may not conduct directly. This authority is separate from but has some similarities to that of "financial holding companies" under the Bank Holding Company Act.

The Act permits financial subsidiaries to engage in a broad range of specific activities, as well as other activities the Treasury determines, in consultation with the Federal Reserve Board, to be "financial in nature or incidental to a financial activity." According to the Conference Report, the "financial in nature or incidental" standard represents a significant expansion of the "closely related to banking" standard that the Board previously applied in determining the permissibility of activities for bank holding companies.

Under the Act's consultation requirement, neither the Treasury nor the Board may determine that an activity is financial in nature or incidental to a financial activity if the other agency disagrees with such a determination in writing. We and the Board are working cooperatively in making these determinations, as the joint proposal demonstrates.

In making determinations, the Gramm-Leach-Bliley Act requires us to take into account, among other factors:

- the Act's purposes,
- changes in the marketplace in which banks compete,
- changes in the technology for delivering financial services, and
- whether the activity is necessary or appropriate to allow a bank and its subsidiaries to compete effectively with any company seeking to provide financial services in the United States.[1]

We also may consider other factors and information that we consider relevant.

The Act prohibits financial subsidiaries of national banks from engaging as principal in certain specified activities, including real estate investment and development unless otherwise expressly authorized by law.

Let me turn now, Mr. Chairman, to a description of the process that the Treasury and the Board are following and where the rulemaking stands currently.

Status of the Rulemaking Process

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[1] Section 5136A(b)(2) of the Revised Statutes (the National Bank Act) provides that:

"In determining whether an activity is financial in nature or incidental to a financial activity, the Secretary shall take into account –
(A) the purposes of this Act and the Gramm-Leach-Bliley Act;
(B) changes or reasonably expected changes in the marketplace in which banks compete;
(C) changes or reasonably expected changes in the technology for delivering financial services; and
(D) whether such activity is necessary or appropriate to allow a bank and the subsidiaries of a bank to –
(i) compete effectively with any company seeking to provide financial services in the United States;
(ii) efficiently deliver information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and
(iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data."

More than a year ago the Treasury and the Board received requests from the American Bankers Association, the Financial Services Roundtable, and the New York Clearing House Association asking that we determine that real estate brokerage and real estate management activities are financial in nature or incidental to a financial activity. Shortly thereafter, the National Association of Realtors sent a letter opposing such a determination.

In March 2000, the Treasury issued an Interim Final Rule setting forth specific procedures for requesting determinations under the Act, and we invited the American Bankers Association and the Financial Services Roundtable to resubmit their requests to conform to these procedures. The American Bankers Association did so in July, and a month later Freemont National Bank submitted a request that referenced the American Bankers Association's request.

After considering the factors specified in the Act and other relevant information, and consulting with the Federal Reserve Board and its staff, in December we agreed with the Board to issue a joint notice of proposed rulemaking with a 60-day comment period. The proposal was published in the Federal Register on January 3rd.

Following publication, it soon became apparent that there was a great deal of public interest in the proposal. Given this wide public interest and our desire to give the public sufficient time to consider and comment on the proposal, and in view of letters we received requesting an extension, the Treasury and the Board decided to extend the comment period another 60 days.

As I mentioned, the comment period has now closed and we are shifting to the comment review process. Of the numerous comment letters we and the Federal Reserve have received, most have come from real estate brokers expressing the same or similar views. We are in the process of reading and analyzing the comment letters, and we will give serious consideration to the views expressed.

Mr. Chairman, let me highlight just a few points about the proposal itself.

The Elements of the Proposal

In assessing the requests we received to approve real estate brokerage, we concluded that a threshold case can be made that direct competition exists between real estate brokers and banking organizations. For example, as the proposal notes, some depository institutions already engage in real estate brokerage. According to information provided by the Conference of State Bank Supervisors, 26 states appear to permit their state-chartered banks or subsidiaries to act as general real estate brokers. The Office of Thrift Supervision has determined that service corporation subsidiaries of federal savings associations may provide general real estate brokerage services.

In addition, banks and bank holding companies participate in most aspects of the typical real estate transaction other than brokerage. These activities include real estate lending, leasing, appraisal and investment advisory services, settlement and escrow services, arranging commercial real estate equity financing, and providing title and private mortgage insurance. Banks and bank holding companies also engage in a variety of activities that at first glance seem functionally and operationally similar to real estate brokerage, including finder activities and securities and insurance brokerage.

The proposal notes that as the financial marketplace continues to evolve, it appears that many financial companies are adding real estate brokerage to their menu of services. Buyers and sellers of real estate increasingly may look to a single company to provide all their real estate-related needs.

The proposal also notes that existing federal and state laws should operate to mitigate the potential adverse effects of combining banking and real estate brokerage. For example, the antitying rules would prohibit the bank from extending credit, furnishing any service, or varying the consideration for any loan or service on the condition that the customer obtain real estate brokerage services from the bank or any affiliate, including a financial subsidiary.

If a customer obtained real estate brokerage services from a bank affiliate or financial subsidiary, the Federal Reserve Act would require any mortgage loan made by the bank to that customer to be on market terms. The Federal Reserve Act also would limit the amount of credit and certain other forms of support that a bank could provide to a real estate brokerage affiliate or financial subsidiary.

In addition, because the proposed real estate brokerage services are activities conducted as agent, with no principal risk involved, the proposed brokerage activity does not appear to present significant financial risks to banking organizations or their depository institution affiliates.

In discussing brokerage activities, our proposal highlights the issue of employee relocation services, some of which seem less obviously a part of real estate brokerage than others. The proposed rule would prohibit brokers from taking title to real estate brokered by the company, but the proposal invites comment on whether taking title might be considered incidental to real estate brokerage under certain circumstances.

We express some doubts in the proposal as to whether all aspects of real estate management are financial in nature or incidental. For example, our proposal would preclude a financial subsidiary or a financial holding company that provides real estate management services from itself repairing or maintaining the managed real estate.

Conclusion

In conclusion, Mr. Chairman, we intend to carefully consider the issues raised by all the commenters, including the views expressed at this morning's hearing. As we move forward, the Treasury will work closely with the Federal Reserve to ensure that this and other rulemakings under the financial in nature authority are consistent with the criteria Congress prescribed, the legal process, and the public interest.

Thank you. I am happy to respond to any questions.

TESTIMONY
BY
RICHARD A. MENDENHALL, PRESIDENT
NATIONAL ASSOCIATION OF REALTORS®

BEFORE THE
HOUSE FINANCIAL SERVICES SUBCOMMITTEE ON FINANCIAL INSTITUTIONS

REGARDING THE PROPOSAL BY
THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
AND
THE SECRETARY OF THE TREASURY
TO
PERMIT FINANCIAL HOLDING COMPANIES AND SUBSIDIARIES OF NATIONAL
BANKS TO OFFER REAL ESTATE BROKERAGE AND MANAGEMENT SERVICES

MAY 2, 2001

Introduction

Chairman Bachus, Ranking Member Waters, members of the Subcommittee, I am Richard Mendenhall, President of the NATIONAL ASSOCIATION OF REALTORS®. I am from Columbia, Missouri where I own RE/MAX Boone Realty, a real estate firm specializing in single-family and commercial brokerage. I have been a REALTOR® for more than 25 years; I am the fifth generation of my family in the real estate business. Our family owns or is in partnership with three real estate firms. Our firms have 140 real estate agents in residential, farm and land and commercial brokerage. In addition, we have two separate property management firms and a separate mortgage company.

The NATIONAL ASSOCIATION OF REALTORS® represents more than 760,000 real estate professionals who practice in all aspects of residential and commercial real estate. We are a grassroots organization that has membership in every state and nearly every congressional district. Our membership is interested in the health, growth, and stability of the real estate industry; and we are also committed to supporting public policy issues that break down barriers to homeownership while expanding opportunities to the largest universe of homeowners.

The proposed Federal Reserve Board-Treasury Department regulation raises important questions for the real estate industry, particularly as we consider the long-term consequences of the proposal. On behalf of the NATIONAL ASSOCIATION OF REALTORS® I want to thank you Mr. Chairman and you, Ms. Waters, for convening this hearing. We realize that oversight hearings on the implementation of the Gramm-Leach-Bliley Act of 1999 (GLB Act or the Act) were certainly forthcoming in the new Congress, but the joint proposed regulation recently issued by the Board of Governors of the Federal Reserve and the Treasury Department gives new urgency to the issue.

Congress adopted financial services modernization legislation that removed the constraints separating banking, securities, and insurance. Undoubtedly most members of Congress thought that banks and holding companies would move to exercise their new powers in securities and insurance and start to integrate the financial powers detailed by the Gramm-Leach Bliley Act (GLB or the Act) into their business plans. We were surprised, however, when we learned that banks wanted to extend their authority into commercial activities so soon after the Gramm-Leach-Bliley Act became effective.

The proposed Federal Reserve Board-Treasury Department regulation suggests that Congress did not resolve the Gramm-Leach-Bliley debates. Despite sweeping expansion in bank powers, the proposed regulation strongly suggests that the banks and holding companies want even more. REALTORS® believe that Congress agrees with us that it is much too soon to take this action.

Congressional Intent and Legislative History

Enactment of the Gramm-Leach-Bliley Act finally came after the banking industry began decrying the shortcomings of the Glass-Steagall Act nearly twenty years ago and initiated periodic attempts to rewrite the law to permit banks, securities firms and insurance companies engage in each other's businesses. As Congress debated the legislation that became the Gramm-Leach-Bliley Act, the distinction between commerce and banking was focused on securities and insurance businesses as representing commercial activities. A subtext of this distinction was a belief that real estate activities were non-banking, commercial and should not be merged with banking and financial activities.

The Gramm-Leach-Bliley Act set a course for commercial banking and investment banking to evolve into an integrated financial services industry following long deliberation and debate about the appropriate regulatory framework and related structural issues. The Act created a mechanism for banks to establish new financial holding companies and national bank financial subsidiaries to take advantage of new powers. While giving these banking institutions and their affiliates new powers, Congress adopted the GLB Act with the full knowledge that banking law and regulation in the United States customarily restricted the nonbanking activities of banks and the banking activities of nonbanking firms. The Gramm-Leach-Bliley Act changed existing law, but the restrictions retained on the mixing of banking and commerce are intended to operate in the new financial services environment. On the House floor Representative Jim Leach was quite clear that the Act repudiates the mixing of banking and commerce.

> [W]hile the financial modernization legislation provides for increased competition in the delivery of financial products, it repudiates the Japanese industrial model and forestalls trends toward mixing commerce and banking. The signal breach of banking and commerce that exists in current law is plugged, which has the effect of both stopping the potential "keiretzuing" of the American economy....
> At many stages in consideration of bank modernization legislation, powerful interest groups attempted to introduce legislative language that would have allowed large banks to merge with large industrial concerns – i.e., to provide that Chase could merge with General Motors or Bank of America with Amoco. Instead, this bill precludes this prospect and, indeed, blocks America's largest retail company from owning a federally insured institution, for which an application is pending.[1]

The Senate Report on the bill also spoke to the prohibition of a general mixing of banking and commerce. In explaining what the Board must consider in establishing new activities that are financial in nature or incidental to financial activities, the Report asserts:

> "This authority includes authority to allow activities that are reasonably connected to one or more financial activities.... The authority provides the Board with some flexibility to accommodate the affiliation of depository institutions with insurance companies, securities firms, and other financial service providers while continuing to be attentive not to allow the general mixing of banking and commerce in contravention of the purposes of the Act."[2]

The NATIONAL ASSOCIATION OF REALTORS® notes that the principal purpose of this hearing is, in essence, another policy debate about what is commerce and what is finance. The

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[1] *Congressional Record*, H11, 529 (1999).
[2] Financial Services Modernization Act of 1999, Report of the Committee on Banking, Housing and Urban Affairs to Accompanying S.900, together with Additional Views. Senate Report 106-44. April 1999. p. 21.

business of brokerage is industry-neutral. Congress determined, in conjunction with regulatory and judicial decisions that banks could engage in brokering "financial" products and services. But if brokerage is extended beyond finance into commerce as proposed by the regulation, where does the demarcation between finance and commerce end? Real estate brokerage involves the marketing and sale of tangible property, the very essence of commerce. Once real estate and property management are deemed finance, what stops the banking and financial services industries from declaring that any other business activity involving tangible products are actually financial? It is not unreasonable to ask the question, "What is next?" Will banks maintain that because they finance automobile dealership they should be permitted to own and operate them?

The 1999 financial services modernization legislation dramatically increased the ability of banks to affiliate with securities and insurance firms. The Act was the culmination of effort by Congress to halt the trend of financial modernization through regulatory decision and judicial challenges. At the crux of the congressional debate was the extent to which legal and regulatory barriers to mixing commercial banking and investment banking were, indeed, outmoded and anti-competitive. Congress acted, but retained legal and regulatory restraints intended to control systemic risks, conflicts of interest, and the potential for plainly objectionable and anti-competitive behavior.

Financial services modernization evolved from Glass-Steagall Act reform or banking reform, as the issue was identified in the 1980s, but there was always a distinction between banking and commerce. The most aggressive banks and largest holding companies would have members of Congress and the public ignore the demarcation between commerce and finance simply because a loan may be involved in a transaction. REALTORS® submit that by adopting a broad interpretation of what finance is, nothing would remain that is uniquely commerce. Yet we believe that Congress knew the difference between commerce and banking, based on the precedent of existing commercial and financial business practices and those tests that were already in place under the Bank Holding Company Act (BHCA) that identified permissible financial and non-financial activities for banks and holding companies. Real estate brokerage and management activities were always considered commerce.

The legislative record reflects that the purpose of Congress in giving the Board and the Treasury Department authority to expand the list of financial activities was to allow the range of permitted activities to evolve as new technological developments occur and the marketplace itself evolves. No reasonable observer would suggest that there has been any significant change in the relevant technology, or in the business of real estate brokerage or management, since enactment of the GLB Act in late 1999. The business of real estate brokerage and management remains, for all practical intents and purposes, the same today as it was on the date of enactment. Indeed, neither the marketplace nor the technology associated with real estate brokerage and management has changed since the debate on the GLB Act began earnestly in the mid-1990s. Congress did not contemplate that in less than two years changes in the marketplace, or the competition that holding companies faced, or that technology would so immediately transform real estate from clearly commerce to finance.

NAR Position On Financial Services Modernization

The banks and holding companies mischaracterize the role of REALTORS® in the public debate. "The Realtors [sic] were not involved in discussions with the Gramm-Leach-Bliley Act of 1999, and we took that as a sign that they accepted their part in the financial services industry," according to a Roger Whiting, executive director and general counsel of the Financial Services Roundtable.[3] REALTORS® did participate in the GLB debate and reiterated our longstanding policy that real estate is commerce, not finance; that banking and commerce should be separated:

> [W]hen financial lines of business do not yield the returns anticipated, financial institutions look to real estate and real estate-related business as potentially profitable enterprises. It is our belief that allowing a mix of banking and commerce, as anticipated in the Senate bill, would at some point tempt financial institutions to enter the real estate business. REALTORS® know from bitter experience with the aftermath of the savings and loan industry crisis and cyclical bouts of economic recession that the financial system's strength will inevitably be tested and the real estate industry will be affected.[4]

NAR urged Senators on the Banking Committee to expressly declare, "real estate brokerage, development and related activities (including property management and counseling) are not financial activities.[5]

Congress did not share the view of some in the financial services industry that real estate was a financial activity. In the Act, among the long list of automatically deemed financial in nature or incidental to a financial activity real estate activities are conspicuously absent. Effectively the GLB Act acknowledged and did not change the long held view that real estate was commerce, not finance.

In fact, the debate on mixing banking and commerce is also a debate about whether real estate is commerce and should be permissible to banks. In closing the unitary thrift loophole much was made about the need to limit the mix of banking and commerce because a thrift holding company has nearly unlimited authority to invest in any number of non-financial enterprises, including real estate brokerage. The American Bankers Association press release praised conferees during the House-Senate negotiations on S.900 as follows:

> The conference committee last night made the right decision to shut down the unitary thrift loophole. For three years, ABA has been working with Congress to restrict the integration of the commercial and banking industries.
>
> By barring commercial firms in the future from chartering and acquiring a thrift, the conference committee has ensured that the integrity of our nation's banking system won't

[3] *American Banker*, Wednesday, March 21, 20001, p. 4

[4] Testimony submitted for the record to the Senate Banking Committee on the "Financial Services Modernization Act of 1999," February 25, 1999, p.2.

[5] *Ibid.*, p. 3.

> be compromised by risky economic concentrations of resources and the kind of the problems that contributed to the recent financial crisis in Asia.
>
> We are pleased that the conferees' action last night ends the ability of non-financial firms to enter the banking business through the back door....[6]

Federal Reserve Board-Treasury Department Real Estate Proposal

Last February Federal Reserve Governor Laurence H. Meyer, speaking to the American Law Institute and American Bar Association, summarized the implementation of the Gramm-Leach-Bliley Act one year after enactment. Understandably comprehensive data is relatively sparse, but Governor Meyer observed, "[The Gramm-Leach-Bliley Act] has not, as yet, induced a dramatic break with the past." Since the new law became effective "almost 500 financial holding companies were formed, twenty or so by foreign banking organizations. But surprisingly three-quarters of these new holding companies have assets of less than $500 million, and half of these have assets of less than $150 million." Governor Meyer further observes that these smaller financial holding companies seem most interested in using the insurance agency and merchant banking powers of the Act and "far less interested in securities and insurance underwriting." It seems that new holding companies are not moving quickly as was widely anticipated or predicted to exercise the new powers of the Gramm-Leach-Bliley Act.[7]

After extensive congressional hearings and debate over nearly three years, the GLB Act created a new framework that acknowledged the synergies that could result from mixing securities and insurance activities with banking. Yet the GLB Act, at Section 103(4)(F), provides that holding companies may engage in any activity that the Federal Reserve Board "has determined, by order or regulation that is in effect on the date of the enactment" of the GLB Act to be so "closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board)." We note real estate brokerage and property management were impermissible to bank holding companies at the time the GLB Act went into effect and has been so since 1972 when the Federal Reserve Board denied real estate brokerage – a non-bank activity -- as an activity closely related to banking.[8]

But with the Act in effect for less than two years, the American Bankers Association and Fremont National Bank & Trust Co., Fremont, Nebraska and the Financial Services Roundtable and the New York Clearing House Association are pressing the Federal Reserve Board and the Treasury Department (the Agencies) to adopt regulations that would define real estate brokerage and real estate management activities as "financial in nature" or "incidental to a financial activity."[9]

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[6] American Banker Association Press Release, October 15, 1999.

[7] Remarks by Governor Laurence H. Meyer before the American Law Institute and American Bar Association, Washington, D.C., February 15, 2001.

[8] Federal Reserve Board, *Bank Holding Company Act Supervision Manual*, June 2000, p.11.

[9] The Financial Services Roundtable draws its membership from the top 150 integrated financial services companies based on market capitalization or imputed market capitalization. The New York Clearing House submitted its request on behalf of The Bank of New York Company, Inc.; Chase Manhattan Corporation; Citigroup, Inc; J.P. Morgan, Inc.; Bankers Trust Company; Fleet Boston, Inc.; HSBC; Bank One Corporation; First Union Corporation, and Well Fargo & Company.

The request raises the GLB Act tests of competition, and changes in the marketplace and technology for delivering financial services. The Agencies must consider factors enumerated in Section 103 of the GLB Act that include the purposes of the Act, together with the purposes of the Bank Holding Company Act. Specifically the Agencies must consider "changes or reasonably expected changes" in the marketplace in which financial holding companies compete as well as changes or reasonably expected changes in the "technology for delivering financial services; and whether such activity is necessary or appropriate" to allow a financial holding company and its subsidiaries to "compete effectively with any company seeking to provide financial services" in this country; "efficiently deliver information and services that are financial in nature through the use of technological means..."; and "offer customers any available or emerging technological means for using financial services or for the document imaging of data."[10]

The GLB Act established a mechanism that permitted the creation of new financial services. While Congress established tests for determining future financial services, the law did not – perhaps could not – specify what financial product and services might evolve over time. Under the GLB Act, the Board, in determining whether to permit a proposed activity under the rubric of it's being either "financial in nature" or "incidental to a financial activity,"[11] is required to consider, among other things, the Congressional purposes of the BHCA. The Board repeatedly has emphasized that among the intended purposes of the BHCA is to prevent the mixing of banking and commerce, as well as to "prevent the undue concentration of economic resources."[12]

These GLB Act provisions strongly suggest that Congress anticipated that new financial holding companies would engage in activities using computer and communication technology and related services information services in delivery financial services. The Senate Banking Committee Report 106-44, while giving holding companies some opportunity to engage in related commercial activities, did not give approval to a general mixing of banking and commerce. The Senate report goes on to state that the Federal Reserve Board has some "flexibility to accommodate the affiliation of depository institutions with insurance companies, securities firms, and other financial services providers <u>while continuing to be attentive not to allow the general mixing of banking and commerce in contravention of the purposes of the Act.</u>"[13] The committee report strongly suggests that the consideration of changes in the marketplace were not considered to be so expansive as to include real estate, but rather the convergence of finance and computer and information technologies to delivery of financial services and perform document imaging.

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[10] Gramm-Leach-Bliley Act of 1999 (Pub. Law 106-102), Section 103(a) (amending the Bank Holding Company Act Section 4(k)(3)).

[11] 12 U.S.C. § 1843(k)(3) ("In determining whether an activity is financial in nature or incidental to a financial activity, The Board shall take into account – (A) the purposes of this chapter and the Gramm-Leach-Bliley Act. . .."). This "chapter" refers to the BHCA, which has been crafted in large part to prevent the mixing of banking and commerce and the attendant concentration of economic resources. Though the BHCA does not expressly enumerate its purposes, there is ample legislative history, as well as regulatory and judicial acknowledgment of those purposes.

[12] *First Commerce Corp.*, 58 Fed. Res. Bull. at 676.

[13] Senate Report 106-44, to Accompany S.900, together with Additional Views. U.S. G.P.O, Washington, 1999, p. 21. Emphasis added.

The Federal Reserve Board itself has observed that the BHCA reflects the intent of Congress to prevent situations in which a bank that has nonbanking affiliates "might deny justified credit to competitors or prospective competitors of such affiliates," or in some fashion cause bank customers to use the services of the bank's nonbank affiliates out of fear of retaliation by the bank.[14] The GLB Act did not change the requirement that the Board determine whether proposed new nonbanking activities, even if they are "financial in nature" or "incidental to a financial activity," may nevertheless contravene the purposes of the BHCA by mixing commerce and banking, with attendant adverse consequences to the public.

The proposed rule would define real estate based on a definition advanced by the banks and holding companies. Yet that definition turns on the financial aspects of mortgaging property, not the commercial aspects of the real estate business. This fairly contorted definition of real estate brokerage contradicts the very definition of brokerage for bank holding companies as defined by the Board in its Bank Holding Company Supervision Manual. Real estate brokerage is "the negotiating of a real estate contract between a buyer and seller for which the broker receives a fee or commission and in which the broker takes no possessory interest in the subject matter of the contract."[15] The Federal Reserve Board, we would note, has stated that this activity is considered impermissible for bank holding companies as a "closely related" banking activity.

The Federal Reserve Board also finalized a regulation determining, after consulting with the Secretary of the Treasury, that acting as a "finder" is an activity that is incidental to a financial activity and, therefore, a permissible activity for a financial holding company. The activity of a finder is defined as bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate. The Board's final rule provides that a finder may act through any means to bring together buyers and sellers of products and services for transactions that the parties themselves negotiate and consummate. But significantly, the Board's final rule prohibits a financial holding company from engaging in any activity that would require the company to register or obtain a license as a real estate agent or broker under applicable law. This prohibition was retained from the proposed rule, despite requests from commenters asking that it be removed. The Board acknowledged that real estate agency or brokerage activities have not been determined to be financial in nature or incidental to financial activities.[16]

The Agencies specifically request comment on two related questions. First, should real estate be deemed a financial asset because it is a comparatively large asset on most individuals' balance sheet or because it is used as collateral for financial instruments? Second, should the importance, complexity, or size of a real estate transaction affect the determination of whether the transaction is financial in nature? The Agencies are direct on this matter by expressing skepticism in the preamble to the proposed regulation that "the importance, complexity, or size" of a real estate transaction should affect a determination as to whether the transaction is financial in nature.[17] REALTORS® support the Agencies' skepticism. How does real estate differ from collectable art,

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[14] *Transamerica Corp.*, 43 Fed. Res. Bull. 1014, 1016 (1957).

[15] Section 3700.3, Impermissible Activities (Real Estate Brokerage and Syndication) BHC Supervision Manual, December, 1992, p. 1.

[16] 66 Federal Reserve, January 3, 2001.

[17] 66 Federal Register, January 3, 2001, p. 211.

automobiles, or household appliances in this regard? Merely financing real estate or some other tangible asset or durable good that may or may not appreciate, or represent a major expense for the borrower simply does not turn the financed asset or good into a financial instrument. The logic simply does not follow.

Concerns and Issues

Ten years ago when the modern assault on what became financial services modernization began E. Gerald Corrigan, then president of the Federal Reserve Bank of New York testified before the Senate Banking Committee on the separation of banking and commerce. Corrigan identified the risks historically associated with mixing banking and commerce: concentration, conflicts, unfair competition and breaches of fiduciary responsibilities.[18] Corrigan identified a second group of risks associated with permitting the merging of banking and commerce as "the dangers that such arrangements will involve the de facto extension of parts of the safety net to any firm that would own and control banks."[19]

There are strong historic reasons to keep financial institutions in the business of finance, and finance alone. Public confidence, and subsequently the national economy, would be seriously tested and lowered if banks are permitted to sell and manage the products that they finance.

There are clear ramifications and concerns that flow from the prospect that banks could act as real estate brokers and property managers. Currently the separation of real estate brokerage and agency and lender mitigates the potential for concentration of market power, conflicts of interests, and unfair competitive practices. These same issues that concerned Congress when debating the GLB Act are raised by reclassifying real estate as a financial activity.

A major concern of REALTORS® is the prospect that the financial holding companies and national banks possess unfair, federally chartered advantages not held by their real estate brokerage competitors. The real estate brokerage industry is already characterized by fierce competition, market efficiencies, and ease of entry so that there is nothing gained for consumers by permitting FHCs entrance.

As Federal Reserve Board chairman Alan Greenspan pointed out, financial holding companies receive a substantial subsidy from the federal government. As a result of the protection provided by federal deposit insurance, bank depositors are willing to accept a lower rate of return on the funds they place on deposit in banks than they otherwise would find acceptable. This significantly reduces the cost of funds for insured depository institutions. Additionally, banks enjoy special access to credit at the Federal Reserve discount window and at Federal Home Loan banks, where they can borrow at below-market rates that are not available to other businesses. All of these benefits and advantages are enjoyed directly by insured banks, and indirectly by their affiliates, and unmistakably would work to the advantage of bank-affiliated real estate brokerage and management firms. The advantages would provide substantial competitive advantages over companies engaged in real brokerage and management.

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[18] E. Gerald Corrigan, President, Federal Reserve Bank of New York. Testimony before the U.S. Senate Committee on Banking, Housing and Urban Affairs, May 3, 1990, p.5.
[19] *Ibid.*, p.6.

Due to their federally chartered advantages, bank ownership of real estate brokerage companies would stifle competition, limit consumer choices and predictably raise consumer costs. Further, exploiting these advantages in the commercial arena would place an unnecessary burden on U.S. taxpayers as well as create unintended consequences on the safety and soundness of the nation's banking system. An important consideration is that the direct and indirect federal subsidies enjoyed by financial holding companies provide a downstream advantage to their subsidiaries.

Concentration, conflicts, unfair competition and breaches of fiduciary responsibility

The principal reasons cited for permitting holding companies to engage in real estate brokerage and property management include better competition, changes in the marketplace and the technology that financial holding companies and subsidiaries can use to deliver financial services, and the necessity and appropriateness of banks entering into real estate.

REALTORS®do not know with certainty how bank-owned realty firms would market their services, but we can make some educated guesses based on their approach to other lines of business. Banks would likely discount their brokerage services to undercut independent brokers and make up the difference by cross-selling other services to customers. They would cross-subsidize their real estate operations with profits from taxpayer-insured operations, freeing more resources for competition. A bank-affiliated real estate firm would benefit from access to the parent institution's extensive databases of depositors, borrowers and credit card holders, which it could use for solicitation purposes.

In a world of bank-owned brokerages, we can also expect an end to mutually beneficial relationships between REALTORS® and bankers. Lenders with their own captive real estate brokerages would have little need to work with independent brokers to market their mortgage products. It can be contended that any potential effects as far reaching as these should not be created from mere rulemaking. There should be fuller, public examination of the consequences of the proposed regulation.

Competition in the marketplace

REALTORS® do not fear competition. The nature of our industry and its relative ease of entry make it one of the most competitive in America. The majority of real estate agents are independent businesspeople that are successful by virtue of their own determination and energy. A large number of real estate professionals are independent contractors that work on a straight commission basis with no guarantee of any minimum income. When new people or companies enter the market, the resulting competition takes place among equals. In our experience it is competition that leads to more and better services for homebuyers.

Competition in the real estate marketplace is fierce. The average real estate brokerage is a small business with a single-office operation with a sales force of about eight agents, who are independent contractors. Large firms do not have significant advantages over smaller firms in real estate brokerage.

The banking industry's search for increased profits through expansion into real estate brokerage is likely to prove frustrating. Banks are unlikely to benefit from economies of scale, cross-selling or diversification. Real estate brokerage contains no identifiable economies of scale to exploit because costs to enter real estate brokerage are quite low, suggesting that additional capital and increases in average firm size that would accompany bank entry into real estate would add little, if any, efficiency gains because there are no economies of scale to exploit.

Bank entry into real estate brokerage would generate few additional profits for banks from cross-selling financial products and services. Real estate firms' experience with packaging real estate related services has demonstrated that consumers prefer to retain choice among the various services associated with the home sale or purchase. Neither homebuyers nor sellers choose a real estate firm specifically because of the firm's comprehensive service package. Just 27 percent of homebuyers said they would choose a real estate agent in the future based on the availability of a menu of real estate related goods and services. Another third of respondents said such goods and services would play no factor in their choice.[20]

Cost savings and additional efficiencies could occur if combining real estate brokerage and banking offered banks greater risk diversification, but diversification opportunities are few because real estate brokerage volatility is low and will not offset the more volatile banking cycles. In fact, when a bank is likely to see its mortgage portfolio weaken, due to increased defaults and delinquencies, the bank is also likely to experience declines in fee income derived from real estate brokerage.

Competition in the real estate markets is intense largely because there is such ease of entry compared to the banking industry. Real estate brokerage is one of the few businesses where it is relatively easy to enter the business as agent or broker. Agents must meet licensure requirements and pass state licensing examination. Brokerage requires bank financing for operating costs, incorporation and licensing, offices and the accoutrements of working with independent contractors.

In contrast, entry into the banking businesses requires obtaining a charter with the necessary funds to meet capital requirements for a regulated financial institution. The bank charter carries both unique responsibilities as a depository institution, in exchange for which the bank has access to the national bank payment system, the financial safety net, and other subsidies.

NAR's concern is not about more competition in the real estate industry. REALTORS® welcome competition, as long as the rules are fair. Despite claims to the contrary, we believe that holding companies entering the real estate brokerage and management businesses will have the effect of actually limiting competition. Directly and indirectly, the holding companies and financial subsidiaries have substantial advantages derived from federal deposit insurance, favorable tax treatment, and special access to credit through the nation's payment system and the Federal Reserve System that assure that banks would not likely compete as equals in the real estate business.

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[20] The 2000 NATIONAL ASSOCIATION OF REALTORS® Profile of Home Buyers and Sellers.

Consequences of the Proposal

The proposal to permit national banks and financial holding companies to engage in real estate brokerage and management wholly fails to appreciate the nature and structure of the real estate industry, and the resulting adverse consequences that would follow from allowing such affiliation.

The proposed regulation sets out the parameters for defining new financial activities as prescribed by the Act. Yet within less than two years the banks and holding companies are seeking new financial activities that clearly would push regulators to define the outer limits of the statute. This comes at a time when Congress has not formally reviewed the implementation of the Act and the performance of regulators.

Current data indicates that, for the most part banks and holding companies are not moving to take advantage of the expanded financial activities in the securities and insurance businesses already authorized. If caution is being exercised to assess what new financial businesses or activities should be initiated, REALTORS® must ask why now is there a rush to engage in real estate brokerage and management?

Regulatory Consequences

If the regulation is finalized as proposed, the Federal Reserve Board and the Treasury Department would permit financial holding companies and national bank financial subsidiaries to engage in real estate brokerage and management activities long deemed commercial and thus off-limits. The Federal Reserve and the Treasury Department believe that the GLB Act's "financial in nature or incidental" standard represents a significant expansion of the "closely related to banking" standard that the Federal reserve Board previously used in determining the permissibility of activities for bank holding companies.[21] If this is true, there are far reaching consequences associated with finding that real estate is finance.

Potential Conflicts Between Federal Banking Regulators and State Real Estate Regulators

REALTORS® believe that more deliberation is needed from the policymaking and regulatory perspectives under the Act if, effectively, the definition of brokerage as related to financial activities is to now be extended to non-financial commerce. Significantly, real estate brokerage and property management firms will be regulated under banking regulations. As a consequence, there appear to be unexamined implications relative to regulating the real estate industry, which is traditionally accomplished through the various state real estate commissions and regulatory authorities. Are there conflicts of regulatory authority between federal banking regulators and state real estate regulators?

[21] 66 *Federal Register*, p. 308.

Competition from Non-Banking Entities Overstated

The banks and holding companies maintain that they are at a competitive disadvantage in the face of the involvement of diversified non-financial holding company and state-chartered bank involvement in real estate brokerage. In effect, the argument is intended to address the issue of whether it is "necessary and appropriate" for holding companies and subsidiaries to engage in real estate brokerage and property management as required by the proposed regulation.

Data documenting the competitive disadvantage that state-chartered banks and diversified thrift holding companies pose for financial holding companies and national banks does not support the bank and holding company claim, however. The data shows that the holding companies have made large inroads into the mortgage origination and servicing business. Furthermore, the market share of thrifts has declined and the influence of a few real estate brokerages engaged in mortgage lending has been minimal.

According to REALTRENDS 500, in 1999 the top twenty-five real estate brokerage firms engaged in mortgage lending accounted for only 78,708 mortgage closings or 0.8 percent of total mortgage originations. The top seventy-five real estate firms affiliated with mortgage banking companies accounted for only 1.1 percent of total mortgage originations.[22]

Banking Competitiveness Compared to Nonbanking Entities

Comparative data examining the real estate subsidiary activities of diversified thrift holding companies is meager and inexact, but a query to the Office of Thrift Supervision determined that there are 107 diversified thrift holding companies with real estate development subsidiaries and agency subsidiaries.[23] Real estate development subsidiaries among this institutions totaled 229; there were only 14 real estate agency subsidiaries among these institutions. We would note that total assets among the 107 thrift holding companies equaled $429.3 billion.

A simple comparison of the assets of diversified thrift holding companies to those of the financial holding companies petitioning the Federal Reserve Board is revealing. Third quarter, 2000 assets of selected holding companies among the top 150 bank holding companies reported by American *Banker* revealed that Citigroup had assets of $804 billion), BankOne, $284 billion, First Union, $247 billion, Well Fargo & Co., $241 billion, FleetBoston Financial, $179 billion.[24]

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[22] Cited in "*Real Estate Brokerage and Property Management Activities: The Consequences of Mixing Banking and Commerce prepared by the Economic Research, the NATIONAL ASSOCIATION OF REALTORS®*." April, 2001. p. 28-30, *passim*. The research paper accompanied the Association's letter of comment to the Board of Governors of the Federal Reserve System and the Secretary of the Treasury regarding the proposed rule to add real estate brokerage and property management to the list of activities permissible for financial holding companies and national bank financial subsidiaries.

[23] The NATIONAL ASSOCIATION OF REALTORS® addressed a specific query to the Office of Thrift Supervision., Research and Analysis Department, April 13, 2001.

[24] American Banker, Top 150 Holding Companies by Assets, as of September 30, 2000.

According to the 2001 Conference of State Banking Supervisors profile of state-chartered banking 26 states that authorized state-chartered banks in those states to engage in real estate brokerage. The proponents cite these state-charter authorities as a reason that national banks should be authorized to engage in real estate brokerage. In this regard, we would note several points.[25] We would not agree on several points. First, the authority for state-chartered banking institutions to engage in real estate brokerage is not a new occurrence. These state authorities have existed for years with many dating from the 1980s. Second, though there is no denying that the state-chartered authorities exist, just how many state-chartered banks actually exercise the authority and just how intense the competition is in their markets is another question altogether.

Concentration of Market Power

The concentration of market power that would exist if a few holding companies were allowed to control the financial services industry and the real estate transaction would be anti-competitive, increase the potential for conflicts of interest, and limit consumer choices. Since 1997, banks have acquired 140 insurance agencies and by the end of 2001 banks will own 40 of the nation's 100 largest insurance agencies. Overall, insurance agencies acquired by banks have performed poorly. In terms of growth, the average insurance agency is growing at an annual rate of roughly 5 percent in total commissions and fees while bank-owned agencies are actually shrinking at a 0.3 percent rate. If banks do not fare better in real estate than they have in securities and insurance, large scale entry into the real estate business could weaken some financial holding companies' standing and place their federally insured operations in jeopardy.

Consumer Issues

Consumers, and especially less affluent homebuyers, may actually experience adverse effects if banks were allowed to become real estate brokers and managers. Independent real estate brokers that work on commission have an incentive, and an obligation, to match consumers with the best housing solution. The primary goal of bank-owned brokerages will be to sell buyers their own loans and other financial products at the best terms for their parent companies, not the consumer. Bank brokers will not have the same fiduciary relationship with consumers that non-bank affiliated real estate professionals have.

Real estate professionals work with their customers in an effort to improve their chances of successfully concluding the home buying transaction. Bank-linked brokers will not have the incentive to arrange financing for buyers whose credit history might compromise the lender's portfolio.

Real estate brokerage is not mortgage lending. Realty firms affiliated with mortgage banking companies and other real estate-associated firms do not enjoy any federal subsidy. The Real Estate Settlement Procedures Act (RESPA) governs the relationship between a real estate client

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[25] In addition to the substantive arguments stated in the text, REALTORS® believe, on the basis of independent research, that there is considerable reason to be skeptical of the claim that 26 states authorize state-chartered banks to act as real estate brokers. NAR contacted by telephone the office of the state banking supervisor in each of the 26 states. Authorities in 11 of those offices responded unequivocally that banks within their jurisdiction do not have authority to engage in real estate brokerage.

who may seek mortgage loan funding from a realty firm's lending affiliate. The opportunity for cross-marketing as envisioned by the banks is limited by the disclosure requirements of RESPA and the reality that real estate agents working to meet a client's needs will oftentimes spurn an affiliated mortgage lender because the real estate transaction will not be executed to the client's advantage.

Mortgage banking firms, which an increasing number of banks and holding companies already own, are not deposit-taking institutions. Their single line of business is mortgage lending. In typical fashion, mortgage banking firms operate on warehouse lines of credit borrowed from commercial banks. Realty-affiliated mortgage banking firms have their own capital at risk, not that provided directly or indirectly by the federal safety net.

We believe that this regulation, as proposed, raises additional questions regarding consumer financial information privacy. Congress recognized during the GLB Act debates that issues relating to consumer financial information privacy were complicated and deserved more comprehensive review. Several bills are already pending that are attempts to address privacy issues raised by the GLB Act and other that are coming to light as policymakers wrestle with these thorny issues. There is little clarity at this point regarding what impact the privacy provisions of the Act will have. Yet the regulation could we make the privacy issues even murkier when mortgage lending, the sale and marketing of real estate, and consumer privacy intersect.

Real Estate Brokerage and Property Management

The proposed regulation defines real estate brokerage as "the business of bringing together parties interested in consummating a real estate purchase, sale, exchange, lease, or rental transaction and negotiating on behalf of such parties a contract relating to the transaction."[26] The definition of real estate brokerage as proposed flatly ignores the commercial nature of the business. In proposing that this activity be determined to be "financial in nature" or "incidental to a financial activity," the notice cites virtually every remotely similar activity that presently is permissible for financial institutions, but it completely ignores those aspects of the real estate brokerage function that clearly are commercial in nature, and not financial.

The first and most fundamental question is not whether some of the aspects of real estate brokerage, or real estate management, may be analogous to particular activities that presently are permissible for banks or their affiliates. The first and most fundamental question should be: "What is a financial activity, as opposed to a commercial activity?" Any discussion or consider-ation of the proposed regulation must begin at this level.

The NATIONAL ASSOCIATION OF REALTORS® submits that financial activities are those that relate to transactions in intangible assets. Commercial activities, on the other hand, are those that relate to transactions in tangible assets. Financial activities are based on the concept of notional value. For example, the value of money is solely notional, as is the value of stocks and bonds. Similarly, insurance represents a commitment to transfer something of notional value on the occurrence of some event. On the other hand, commerce involves the transfer of tangible

[26] 66 Federal Register, p. 308.

assets (such as cars, property, televisions, etc.), the value of which derives from the uses to which they can be put.

Consider the case of a local store accepting a credit card for a purchase. A retail merchant selling dry goods to a consumer who use a layaway or deferred payment plan is no more engaged in a financial activity than is the real estate agent who provides that same consumer with information about real property. If real estate is a non-financial asset, then buying and selling the property is not a financial activity not is it incidental to the financial activity. The argument from this perspective suggests that finance is more incidental to brokering of properties.

While commerce, other than through barter, inevitably entails the use of financial assets such as money, this does not mean that commerce is "financial in nature" or "incidental to a financial activity." If it were otherwise, the GLB Act would have to be interpreted as wholly abolishing the distinction between finance and commerce, meaning that financial holding companies would be free to engage in any activity that involves the use of financial assets, including the manufacture and sale of automobiles, television sets, or any other product.

Property management involves the overall management of the property, from obtaining a good, qualified tenant, to collecting the rents, taking care of renovations and repairs, hiring the best people for jobs from maintenance workers to accountants, and dealing with any legal proceedings related to the property. Property management is significantly different from banking and financial related activities, and requires considerable expertise and full accountability for economic and business risks.

The only property management activity that is incidental to financial services is cash management. To argue that this makes property management a banking related activity would open the door to include any business that maintains bank accounts as a banking related activity.

Banks ownership of property management firms could create conflicts of interest. Banks have access to financial information about a property (which would be disclosed during the loan application process), including the underlying economic assumptions of the property, the length of leases and lease terms, as well as tenant information. This information could be used by a financial institution's affiliate management company to undermine the leasing and marketing of the property by the private management firm. Banks could also use predatory pricing tactics, by offering property management services as a loss leader to gain control of the demand deposit accounts of income producing property owners.

Conclusion

When Congress adopted the GLB Act in 1999, there was justifiable reason to consider the new legislation sweeping. The Act established a new framework to expand the activities of banks. The GLB Act also expanded the scope of permissible activities and rationalized the process for banking and financial services institutions to enter into these new activities. Congress intended to enhance competition in the financial services industry by eliminating legal and regulatory barriers separating banking, securities firms and insurance companies and by facilitating affiliation among them. At the same time, Congress intended to retain the separation of banking and commerce.

Representative Jim Leach made the point of what he and his colleagues in Congress intended regarding the mix of banking and commerce in his remarks to the Conference of State Banking Supervisors at their meeting in May 2000. Representative Leach said,

> " Of all the things I am proud of in the modernization legislation it is that our government's two principal financial bodies – the Treasury and the Fed – changed judgment and today adamantly stand with me against mixing commerce and banking. There should be no misunderstanding. If this precept had been included in the final legislative product, I would have done my best to pull the plug on financial modernization.[27]

REALTORS® would submit that the proposed rule does not meet the tests calling on the Agencies to consider the purposes of the Bank Holding Company Act and Gramm-Leach-Bliley Act. These factors include changes or reasonably expected changes that affect financial holding companies' markets, their ability to competition with other financial companies providing financial services, and to account for technology applications that permit delivering financial services. Neither the markets, the technology, nor the competition has changed significantly to warrant expanding banks' new powers to include real estate brokerage and management.

With the new financial services modernization law in effect for little more than a year, it is too early to expand the list of new financial activities, especially since the banks have not move to take advantage of those powers that are undisputedly financial activities under the Act. Banks have not moved to use the enhanced activities automatically determined by Congress to financial in nature nor do the Federal Reserve Board and the Treasury Department have much experience in regulating their the banks and holding companies under the provisions of the new law. The banks are pressing the Agencies to make a determination far in advance of the regulatory experience needed under the provisions of the Act.

This proposed reclassification of real estate and property management is an attempt to obliterate the distinction between banking and commerce. Using the regulatory process, banks are making an end run on Congress. Any significant redefinition as proposed raises policy questions on the distinction between finance and commerce that Congress should address because it is clear Congress intended to maintain a distinction. That distinction included real estate as commerce, not finance.

Mr. Chairman and members of the Subcommittee thank you for this opportunity to present our views regarding the Federal Reserve Board-Treasury Department proposed regulation on real estate brokerage and property management. It is our hope that the Agencies will not finalize to the proposal in its current form. To go forward with the proposed regulation in so short a time since the Act went into effect seems to be an unwarranted attempt to press the very limits of the new financial services law and its implementing regulations without the further input of Congress.

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[27] Rep. Jim Leach, Remarks prepared for delivery before the Conference of State Banking Supervisors, May 12, 2000.

We would remind the Committee of Alan Greenspan's apt comments in his testimony on H.R.10, the base legislation of the Gramm-Leach-Bliley, in 1999. While discussing the advisability of mixing banking and commerce as reflected in the prospect of commercial companies owning banks, Chairman Greenspan said to the House Commerce Committee: "It seems to us wise to move first towards integrating banking, insurance, and securities...and employ the lessons we learn from that important step before we consider whether and under what conditions it would be desirable to move to the second stage of full integration of commerce and banking."[28] REALTORS® believe this advice is also applicable in the current context of the Agencies' proposal that would in essence abrogate the commercial nature of real estate and declare real estate brokerage and property management financial activities, opening the way for financial holding companies and subsidiaries to enter these businesses long denied to banks and bank holding companies.

[28] Alan Greenspan, Testimony on H.R. 10 and the Need for Financial Reform before the Committee on Banking and Financial Services, U.S. House of Representatives, February 11, 1999. p. 3.

RESPONSE TO ADDITIONAL QUESTIONS FOR THE RECORD TO RICHARD MENDENHALL, PRESIDENT, NATIONAL ASSOCIATION OF REALTORES, SUBMITTED BY REP. SPENCER BACHUS

(1) In your view, what are the principal distinctions between the activities and authorities of a mortgage banking institution as opposed to those of a commercial bank?

Response: The federal banking charter provides significant government-supplied advantages to banks that are not available to mortgage banking companies or real estate brokerage firms.

Advantage	Impact on Banks
Federal Home Loan Bank membership	Increased liquidity and lower capital
Federal Reserve payment system guarantees	Reduced borrowing costs
Federal Reserve Fedwire system guarantees	Increases funds available for lending
Bank debt receives preferential risk-based capital treatment	Reduces the cost of funds for banks
Federally guaranteed deposit insurance	Lowers the cost of capital relative to non-banks
Federal Reserve's discount window access	Increases funding available for lending
Government-imposed barriers to entry	Limits direct competition

The banks' advantages are passed to the financial holding companies which are regulated financial institutions generally viewed as 'too big to fail.' These advantages can flow to a subsidiary of the financial holding companies (FHCs) through lower profitability requirements and other accounting practices. If FHCs are allowed to engage in real estate brokerage, the cost advantages accorded to financial holding companies by their special status create an unfair advantage over independent real estate brokerage firms. FHCs would be in a position to undercut real estate brokerage firms and pose a threat to competition and the quality of service.

Mortgage banking companies and real estate brokerage firms do not have federal charters and do not receive any of the advantages listed above. Mortgage banking companies are not banks at all. They are corporations whose business is to borrow short-term funds to finance the origination of mortgages. All of the mortgages originated by mortgage companies are sold to depositories, such as commercial banks or thrifts or the secondary market institutions. Mortgage companies do invest or lend money and thus do not require the same level of capital required by bank regulators. Given the low risk of these institutions, mortgage companies are not regulated like depositories.

Barriers to entry, including the capital required for mortgage companies and real estate brokerage firms are low relative to other industries. There is no restriction on ownership by other commercial enterprises. FHCs often own a mortgage company. Real estate brokerage and other commercial firms sometimes own mortgage companies. However, a mortgage company cannot own a depository institution. When Congress adopted the GLB Act in 1999, it debated extensively the mixing of banking and commerce before adopting provisions to curtail the growth of thrift holding companies and to prohibit commercial firms from owning thrifts.

One example that illustrates the difference is Prosperity Mortgage. Long & Foster Realtors® owns half of Prosperity Mortgage, a mortgage company not a bank. This company originates mortgages for sale to commercial banks and other investors. Indeed, Prosperity Mortgage is also half owned by Wells Fargo, a commercial bank. However, the joint venture structure allows development of economic partnerships, but prevents control of a real estate brokerage firm by a federally chartered bank and prevents a commercial enterprise, such as a mortgage company, from owning a federally chartered bank.

Consistent with the policy of preventing the mixing of banking and commerce, the prohibition against ownership by a commercial enterprise was designed to prevent the 'upstreaming' or transfer of the benefits from a federally or state-chartered depository to an unregulated commercial holding company. Ownership of a real estate brokerage by a financial holding company represents an unfair advantage and is not parallel to ownership of a mortgage bank by a real estate brokerage firm.

(2) You highlighted in your testimony the conflicts of interest that might arise from banks' entry into the real estate brokerage and management business. I am particularly concerned about the scenario in which a real estate brokerage firm applies for credit at a local bank, which is then free to share the information gathered in underwriting that loan with an affiliated real estate brokerage entity, to the obvious competitive disadvantage of the loan applicant. Is this a valid concern? Can you cite other examples of potential conflicts of interest?

Response: There are valid conflicts of interest that can result from the banks entry into the real estate brokerage and property management business. When a holding company controls both banks and nonbanking organizations, the following scenarios could result: (1) The denial of credit to a competing brokerage or property management firm, (2) preferential credit terms for bank affiliated companies, (3) misuse of proprietary information gained through the loan process, and (4) pressure placed on consumers to use other services of the bank

Denial of Credit. A brokerage firm seeking credit from a bank with an affiliated brokerage firm will essentially be seeking financing from its competitor. In order to help its nonbanking affiliates, a holding company bank might deny justified credit to competitors of such affiliates, thereby restricting the vigor of competition and denying deserved credit accommodation to legitimate businesses.

Preferential Credit Terms. Even if the bank grants the credit to its competitor, the nonbanking organizations may occupy a preferred position over that of their competitors in obtaining bank credit. Banks may even continue to make loans to failing affiliated firms, which could ultimately threaten the safety and soundness of the banks.

Misuse of Proprietary Information. Proprietary information of a real estate brokerage or property management firm received through the loan application process could eventually end up in the hands of the bank's competing affiliates. The brokerage firm will reveal information such as commission income and business expenses. A property management firm will reveal economic assumptions about the property including lease terms and termination rights. Knowledge of this information places the bank's affiliated entities in a highly advantaged competitive position. A financial institution's affiliate management company can now market their services to a competitors' tenants having knowledge of their lease expiration dates and the financial terms of the lease arrangements.

Pressure to use Other Bank Services. When a holding company extends credit, it might exert pressure on borrowers to do business with the lending bank's affiliated corporations rather than with their competitors, thus denying those borrowers an appropriate freedom of choice[1]. The primary issue is not whether overt pressure will be consciously or deliberately exerted on bank customers to use a bank-affiliated real estate broker. Instead, the concern is that the natural perception of potential homebuyers and home-sellers would be that if a sale of real property were arranged through a bank-affiliated broker, credit for any prospective purchaser would be more easily obtainable through the broker's affiliated bank. A prospective home-seller naturally would want to increase his or her likelihood of having prospective purchasers qualify for financing. This again places the competing real estate brokerage firm at a disadvantage to the bank owned brokerage.

[1] *Transamerica Corp.*, 43 Fed. Res. Bull. 1014, 1016 (1957).

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Testimony of

Philip M. Burns

On Behalf of the

American Bankers Association

Before the

Subcommittee on Financial Institutions and Consumer Credit
of the
Financial Services Committee

United States House of Representatives

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Mr. Chairman, I am Philip Burns, Chairman and CEO of Farmers & Merchants National Bank in West Point, Nebraska, and a member of the American Bankers Association's Government Relations Council. I am pleased to be here today on behalf of the American Bankers Association ("ABA"). ABA brings together all elements of the banking community to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings institutions, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

I want to thank you, Mr. Chairman, for holding this hearing. The issues we are here to discuss this morning are not new – in fact, they have been debated in this legislative body for many years. However, the statutory context within which today's discussion will take place is quite different. In 1999, Congress took an historic step to modernize the regulation of the financial services sector by passing the Gramm-Leach-Bliley Act ("GLB Act"). This legislation recognized that decades-old restrictions were stifling competition, and that both consumers and the economy would benefit from streamlining the regulatory framework. The fundamental tenet of the GLB Act is to create a level playing field among providers of a wide array of financial and related services to promote free and fair competition.

Recognizing that a dynamic marketplace requires a flexible regulatory structure, the GLB Act gives the Federal Reserve Board ("Fed") and the Department of the Treasury ("Treasury") the authority, within certain guidelines, to permit banking organizations to offer additional products and services not specifically listed in the law. This authority for regulators to respond to changing market conditions is critical to achieving the pro-competitive goal of the GLB Act. Without it, the regulatory framework of the financial services industry will be outdated very quickly, and the industry and its customers will end up back in a regulatory straitjacket – the very problem the GLB Act was intended to resolve. Thus, in putting forth the proposal on real estate brokerage and management, the Fed and Treasury are following exactly the process Congress intended when it passed the GLB Act only a year-and-a-half ago.

In today's marketplace, securities firms, insurance companies and real estate firms can and do provide a full range of real estate services, from finding a home, to financing it, to insuring it. Banking organizations, however, are excluded from real estate brokerage activities – the crucial first step in a real estate transaction. Many banks, my own included, believe that our customers and our communities would benefit if banking organizations were permitted to offer these services. We believe this situation is a perfect example of the type of competitive inequity that Section 103 (a) of the GLB Act was intended to address, and demonstrates why regulatory flexibility is such an important component of financial modernization.

Let me assure you that the competitive issues we are talking about here this morning are important to small banking organizations. In West Point, I face competition from many financial service firms that offer real estate brokerage. And, importantly, many real estate brokerage firms are now placing loan originators in their real estate offices. ***Some real estate agents are now objecting to the very combinations that they themselves have undertaken – offering brokerage, mortgage banking, and, often, insurance under one roof.***

It is important to my customers, my community and the survival of my bank that we be able to offer the same products and services as our competitors – and that includes real estate brokerage and management.

In my statement today, I would like to make three key points:

- Allowing banking organizations to act as real estate brokers and property managers will enhance competition – and more competition means more choices, more efficient services at lower prices, and greater convenience for customers. This is clearly in accordance with the pro-competitive spirit of the GLB Act.

- The GLB Act recognized that achieving the goal of promoting competition necessarily required regulatory flexibility. Section 103 (a) provides that flexibility by authorizing the Fed and the Treasury, subject to certain statutory guidelines, to approve additional activities for banking organizations – including real estate brokerage and real estate management.[1]

- All consumer protections – ***including all state licensing, qualification, sales practices, and continuing education requirements*** – would apply equally to bank-affiliated real estate agents. In fact, the rule proposed by the Fed and the Treasury actually ***increases*** consumer protections by extending to bank-affiliated real estate agents existing federal prohibitions on tying other services to credit extensions.

I will discuss these points in detail in the remainder of my statement.

[1] The term "banking organization" is used in this statement to mean activities conducted in affiliates of either the bank or within a Financial Holding Company (FHC). Under the Gramm-Leach-Bliley Act, activities determined to be financial in nature or incidental to such financial activity may be engaged in by an FHC or a subsidiary of a national bank (with three exceptions, including insurance underwriting, real estate development and merchant banking, for the bank subsidiary).

Competition is Good for Consumers

The benefits of competition are well known. In a free market, businesses choose to offer new products if they believe they can provide better services at competitive prices. Obviously, not all banking organizations will choose to offer real estate services, but those that do will enter the market because they believe they can meet or beat the competition. Increasing the number of providers raises the bar for all the participants, forcing improvements in efficiency, pricing and service levels – ***all to the benefit of homebuyers***.

Opposition to bank-affiliated real estate services is an obvious attempt to keep new and innovative providers of real estate services out of the market. Such an approach can only be termed anti-competitive and anti-consumer.

While opponents of increased competition work to block banking organizations from real estate brokerage, they often provide a full range of financial services themselves, combining real estate, insurance, and securities products with mortgage and banking products. In fact, that is exactly what is happening in today's real estate market. For example:

- ***Long & Foster***, the largest real estate firm here in the Washington D.C. area, makes no bones about how it can provide end-to-end services. One ad (see next page) touts it as being "More Than a Great Real Estate Company. We're Also A Great Mortgage, Title, and Insurance Company, Too!" The ad goes on to say: "Imagine the convenience of buying a home, securing the mortgage, arranging the title work, and getting homeowners' insurance – all in one place!".

- ***Cendant Corporation*** provides all types of real estate, mortgage and insurance services through its affiliates ***Century 21***, ***Coldwell Banker,***


LONG & FOSTER COMPANIES
Long & Foster—More Than A Great Real Estate Company.
We're Also A Great Mortgage, Title, And Insurance Company, Too!
Since 1968, the LONG & FOSTER COMPANIES have grown to become the largest and most respected real estate company throughout our five-state Mid-Atlantic region, with annual sales of $13.3 billion.
We've also become quite a powerhouse in mortgages, title, and insurance, too.
Imagine the convenience of buying a home, securing the mortgage, arranging the title work, and getting homeowners' insurance—all in one place!
That's precisely what the LONG & FOSTER COMPANIES do for their clients and customers: deliver top-quality real estate and related financial services—all in one place—from a name synonymous with customer satisfaction and trust.
Convenience costs no more with the LONG & FOSTER COMPANIES. In fact, it could cost you much less. Rely on your professional Long & Foster Sales Associate to put you in touch with the other members of the LONG & FOSTER COMPANIES family, whose expertise in mortgages, title, and insurance fully complements that of our expert REALTORS®.
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LONG & FOSTER, REALTORS
LONG & FOSTER COMPANIES
PROSPERITY MORTGAGE COMPANY
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Real-Edge Services, All in One Place.™

ERA Real Estate*, *Cendant Mortgage and FISI-Madison Financial.

- ***USAA*** provides insurance, banking and other diversified financial services including real estate advisory, management and transaction services to corporate and institutional clients through USAA Real Estate Company, USAA Realty Company, and ***USAA Federal Savings Bank***.

- ***GMAC Home Services*** advertises the "Complete Connection," providing all types of real estate services, including brokerage, through ***GMAC Real Estate*** and financing through newly authorized ***GMAC Bank*** and ***GMAC Mortgage*** — also described as the "GMAC Universe."

- ***Prudential Insurance Company*** provides insurance, real estate brokerage and relocation, securities investments and a full range of banking services (including deposits), among its many products through ***Prudential Bank***.

- ***Crye-Leike Inc, Realtors***, the biggest real estate company in Tennessee, combines real estate and banking through ***First Trust Bank for Savings,*** which has as its largest shareholder Harold Crye and Richard Leike.

The point here is that these firms bring together the very types of synergies that the opponents of bank participation are now protesting. Paul Harrington, president of DeWolfe New England which is one of the largest real estate firms in the Northeast, was quoted in the *Boston Globe* as saying: "We believe that banks ought to be able to compete with us as long as there are safeguards to insure that deposits are not being improperly invested. It would be hypocritical for us to say otherwise because we promote the fact that we offer customers convenience through one-stop shopping."[2]

Both large and small banking organizations have an interest in this issue. While some large banks may be interested in providing high-quality, cost-effective real estate

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[2] *The Boston Globe, February 25, 2001*

services, let me assure you that banks like mine are also keenly interested in providing these services. I believe, as do many of my colleagues who run small community financial institutions, that these services would significantly benefit our customers and our communities.

In fact, the ability to offer real estate brokerage may be more important for smaller institutions. Rural communities may lack real estate agents or are served only by branches of brokers in other towns because there is insufficient business to warrant a local brokerage office. In such small communities, the bank is perceived as the place that will have the greatest amount of information on what properties are for sale, including farmland acreage in agricultural communities.

Many community bankers view real estate brokerage as simply rounding out the services they provide to the community and solidifying customer relationships – which, ultimately, is the name of the game in today's competitive business environment. Their goal is to be viewed by their customers as a one-stop financial services supermarket. For the typical community bank, the intent is *not* to turn real estate brokerage into a major income-producing center, but rather to provide high-quality, high-personal-touch services for customers whose needs the bankers intimately understand and whom they already serve in other capacities. As such, in communities where there are no real estate firms, community banks typically contemplate establishing a subsidiary and licensing one or more employees as real estate brokers (fully subject, of course, to state real estate licensing provisions). In other instances, small banks are likely to partner with existing real estate brokers to provide these services.

Banks that already offer real estate services through the trust department frequently find themselves having to explain to customers that the bank cannot help them with these services outside the trust relationship. These customers do not understand why the bank is unable to do so. Authority to offer real estate services by the banking organization would bridge this unnecessary gap. In many instances, the bank would likely hire an outside broker – as is done now with trust activities – and work with him or her, sharing commissions as permitted under state law and negotiated between the parties.

Many agents are not concerned by the prospect of banking organizations offering real estate services. Many look forward to the opportunity to partner with a local bank. Independent agents who provide good service today know that they will be competitive with ***anyone***, whether the competitor is another independent agent or one affiliated with a bank. The views of these real estate agents are often lost in the emotional rhetoric of their trade association. Here are a few examples of comments filed by real estate agents with the regulators on this proposal:

- A real estate broker in North Carolina writes: "I am a 38-year veteran of the real estate industry and do not agree with our National Association of [Realtors]....There are several reasons I feel this way, primarily because our small family-owned business has always faced stiff competition from large real estate firms, yet we have been able to earn a good, honest living. I believe that competition is the American way and if you're good at what you do, you can survive whether large or small."

- A real estate broker in Wisconsin writes: "I don't recall the NAR concerning themselves with real estate brokers having access to on-line companies therefore cutting the independent mortgage banker and local lender out of the transaction."

- Another real estate agent notes: "I would welcome the hopefully more professional business management that banks would likely bring to this business. With most real estate being part-time people with limited training, the real estate business is full of mis-information, poor service, etc., a situation that could be improved with bank involvement. Furthermore, the American consumer deserves more true competition in this business. Bank owned real estate agencies may be able to lower transactions costs to consumers through aggregation of services benefiting the public as a whole."

- A broker from California writes: "Additional competition will be healthy for the industry. Banks and other financial institutions have learned how to meet the needs of consumers and to handle their financial matters. One's home is the biggest financial asset most consumers will ever deal with. If agents are so special for consumers, then they have nothing to fear. Maybe we could see commissions come down!"

- Another real estate agent writes: "NAR [National Association of Realtors] predicted the doom and gloom many, many years ago when franchise brokerage was in its formative stages. ERA, RE/MAX, Coldwell Banker et al were all predicted to end 'mom and pop' real estate firms. These franchises have come, many have gone or merged with others. And yet still, 'mom & pop' brokerage firms continue to survive because of the personal attention. I welcome the competition, and I will continue to survive."

Simply put, the best, most efficient providers of any product or service will be leaders in any market. Added competition does raise the bar for everyone, and certainly should raise the expectations of consumers that they are getting the best possible service at the most competitive price.

The GLB Act was designed to enhance competition among financial services providers and, importantly, to end the problem of banking organizations being unable to compete with other financial organizations that had more freedom to adjust to the marketplace. I have already discussed how real estate companies offer end-to-end services, including mortgages. Credit unions can also offer real estate brokerage services. For example, recently several credit unions in Wisconsin jointly purchased a majority interest in one of the state's larger real estate brokerage firms. Restricting banking organizations from offering the same end-to-end combination of real estate services and mortgage lending as others will place banks at a tremendous competitive disadvantage – losing not just an opportunity in the brokerage field, but also the opportunity to interact with the customer in the first place and to offer one of the most traditional of banking products – the mortgage loan.

In fact, if the lobbying efforts of the real estate agent's trade association are taken to its logical conclusion – and there is to be no affiliation of banking and real estate brokerage – then it would only be fair and logical to require the divestiture of the traditional banking activities – particularly mortgage lending – now increasingly being offered by real estate brokerage firms.

The GLB Act Was Designed to Allow Flexibility to Adjust to the Marketplace

The Gramm-Leach-Bliley Act established a framework for modernizing our financial system. After working on this for the last 20 years, Congress recognized the need for flexibility in the face of a rapidly evolving financial landscape. As Senator Phil Gramm said at the signing ceremony for this Act: "The world changes, and Congress and the laws have to change with it....We have learned that we promote economic growth and we promote stability by having competition and freedom."

In the years immediately preceding passage of the GLB Act, Congress recognized that the statutory standard for regulatory approval of new activities for bank holding companies — the "closely related to banking" standard — was woefully inadequate in an economy transformed by technological progress. Thus, Congress agreed to a new standard to enable banks and bank holding companies to remain competitive no matter in what direction financial services evolved. That new standard — activities that are financial in nature or incidental to a financial activity — was intended to provide the flexibility Congress knew would be necessary. Those activities may be conducted only in financial holding companies ("FHC") or financial subsidiaries meeting certain safety and soundness and community needs standards enumerated in the statute.

However, Congress did not give the regulators unfettered discretion when making the determination that an activity was financial in nature. Section 103(a) of the GLB Act specifically set forth certain traditional banking activities that Congress knew were clearly financial in nature. Importantly, it further set forth three categories of activities and authorized the regulators to determine the extent to which the activities are financial in nature or incidental to a financial activity. Those activities are:

1. Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities;
2. Providing any device or other instrumentality for transferring money or other financial assets; and
3. Arranging, effecting, or facilitating financial transactions for the account of third parties. [3]

The GLB Act requires that the regulators incorporate into their determinations, the statutory purposes, changes in the financial services industry, technological innovations, and competitive factors.[4] Congress intended clearly by including these factors that banking institutions be kept competitive. The GLB Act, therefore, adopted a very broad test to determine what activities are permissible for an FHC and financial subsidiaries.[5]

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[3] Section 103(a).

[4] Specifically, the statutory factors are: (1) the purposes of [the BHCA] and the GLBA; (2) changes or reasonably expected changes in the marketplace in which financial holding companies compete; (3) changes or reasonably expected changes in the technology for delivering financial services; and (4) whether such activity is necessary or appropriate to allow a financial holding company and the affiliates of a financial holding company to: (i) compete effectively with any company seeking to provide financial services in the U.S.; (ii) efficiently deliver information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and (iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data. GLBA section 103(a), new BHCA section 4(k)(3).

[5] Last year, the ABA and several large and small banks petitioned the Fed and the Treasury for the ability to provide real estate brokerage and property management services. The agencies issued their proposal to permit such activities on January 3, 2001. Comments were due on May 1, 2001.

ABA strongly believes that both real estate brokerage and property management meet the criteria set forth in the statute. For most consumers, finding, financing, and insuring a home is by far the largest financial transaction they will ever undertake. Real estate brokerage involves negotiating a contract for the purchase, sale, exchange, lease, or rental of real estate for others. It seems clear that real estate brokerage services fall squarely into the category of "arranging . . . or facilitating financial transactions for the account of third parties."

Real estate management is the business of providing day-to-day management of real estate assets as well as the provision of advice and related services with respect to the purchase, sale, exchange, lease, or rental of real estate assets. Given this definition, real estate management clearly falls in the category of "arranging…or facilitating financial transactions for the account of third parties." Thus, with the passage of the GLB Act, we believe there is clear authority for the regulators to permit banks to engage in real estate brokerage and management.

The National Association of Realtors ("NAR") would have this Subcommittee believe that Congress meant to preclude real estate activities in the GLB Act and that the legislation accomplished that goal. ***This is simply untrue, and we have seen no specific evidence to back up this unfounded charge.***

To the contrary, the GLB Act itself demonstrates Congress's knowledge of this issue and its determination that financial subsidiaries of national banks should be prohibited ***only*** from engaging in real estate ***development*** activities – the riskier aspect of the business in which the banking organization takes an ownership position.[6] Had Congress intended to prevent banking organizations from engaging in the agency activities of real estate brokerage and real estate management, it clearly knew how to do so. ***The fact that Congress chose only to prohibit real estate development leads to the conclusion that Congress did not intend to restrict agency activities.***

[6] We are submitting for the record a detailed analysis of the legislative history of the GLB Act.

In fact, the NAR's charge that the Fed/Treasury proposal violates the legislative intent of the GLB Act is not based on any Congressional intent to specifically preclude real estate brokerage – because there wasn't any such intent. Certainly the NAR had every opportunity to raise the issue with Congress in 1999 and either chose not to or did so without success. Rather, NAR's objection is based on the fact that Congress, in the GLB Act, prevented the further mixing of banking and commerce through unitary savings and loan holding companies. However, this argument assumes that Congress determined that real estate brokerage was commerce and not financial in nature or incidental to a financial activity, which it clearly did not. To the contrary, Congress explicitly left the determination of whether or not a given activity is financial in nature or incidental to a financial activity to the Fed and Treasury. To reiterate, if Congress had wanted to make such a determination to exclude the proposed activities, it would have explicitly done so – as it did with real estate development.

Having just a year-and-a-half ago made the decision to leave that determination to the regulators – so that they could keep the financial structure up-to-date on an ongoing basis – Congress is now being asked by the NAR to intervene in the very process the Congress has just created. ***Thus, it is NAR that is violating the clear intent of the GLB Act – the intent of Congress to have these very types of determinations made by the Fed and Treasury, based on their expert knowledge of the changes in the financial services marketplace.***

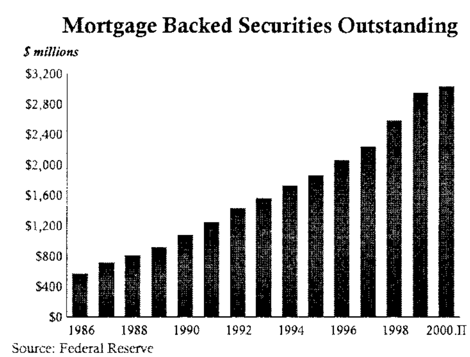
As noted above, the GLB Act requires that the regulators consider ***competitive factors*** and ***technological innovations*** when determining whether activities are financial in nature. A particularly applicable statutory phrase to focus on in this context is whether the activity is "appropriate" to allow institutions to "compete effectively with any company seeking to provide financial services in the U.S." We have already demonstrated that real estate brokerage firms are providing financial services throughout the U.S. Clearly, the fact that real estate brokerage firms are offering mortgages and other financial services must be part of the regulatory consideration. In addition to the examples of real estate firms that integrate brokerage services with mortgage financing and insurance, let me give you one more that is not a household name in most areas of the country. Howard Hanna Real Estate Services – the largest real estate company in Pennsylvania, Ohio and West Virginia – advertises the following: "We can handle every aspect of any real estate transaction from appraisal to closing 'IN-HOUSE'." Through their mortgage bank, ***Howard Hanna Financial Services*** – the largest independent mortgage bank in western Pennsylvania – they are easily able to combine all real estate services with mortgage financing.

In fact, Howard Hanna has recently established a program known as "Partnering for Profitability" to provide smaller real estate companies with mortgage processing services, underwriting, closing and secondary market activities, as well as various loan products.

Simply put, while real estate firms like Howard Hanna can offer "every aspect of any real estate transaction," banking organizations cannot. Competitive imbalances like this are the very thing that Congress sought to correct when it enacted the GLB Act, and we believe that the use of the flexibility granted to the regulators under Section 103 (a) is clearly justified in the case of real estate brokerage and management authority for banking organizations.

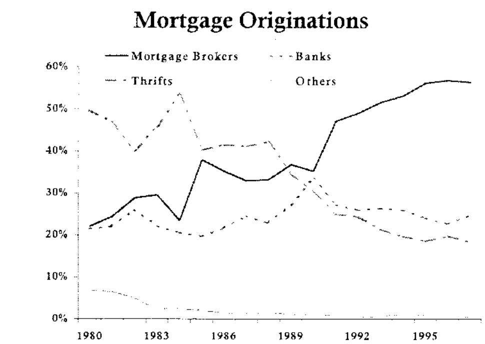
Technological innovations have also had a dramatic impact on real estate markets. Perhaps the biggest change is the development of the secondary market for mortgage loans and the efficient process that bundles individual home loans into highly liquid, globally-traded securities (see Chart 1). The increasing importance of the secondary

Chart 1



market has facilitated the rapid growth of mortgage lending outside traditional banking and savings institutions (see Chart 2). In fact, securitization has significantly changed the very nature of mortgage funding, enabling real estate firms to establish their own mortgage companies and to offer end-to-end real estate transactions – helping a buyer find a home, finance it, and insure it. ***The result is that traditional deposit-based lenders – banks and thrifts – are often bypassed completely. These are exactly the kinds of technological changes the GLB Act authorized the Treasury and the Fed to address.***

Chart 2



Source: MBA

The dominance of the secondary market is clear evidence that this form of funding for plain vanilla mortgage loans is generally superior in terms of costs to funding with bank deposits. If banks somehow enjoyed some special benefit from deposits, or deposit insurance (which banks pay for through premiums and extensive regulatory costs), banks would not be selling into the secondary market, and the secondary market would not control an ever increasing share of the marketplace. No amount deposit insurance can counteract this fundamental principle of efficient markets. More importantly, access to this secondary market source of funding is available ***equally*** to mortgage and banking organizations, and is clearly why real estate companies increasingly are affiliating with mortgage banking companies.

To summarize this section, the GLB Act recognized that achieving the goal of promoting competition necessarily required regulatory flexibility. Section 103 (a) provides that flexibility by authorizing the Fed and the Treasury, subject to certain statutory guidelines, to approve additional activities for banking organizations – including real estate brokerage and real estate management. The ABA believes strongly that real estate brokerage and management meet the criteria. Of course, the Fed and Treasury have not made any determination on this proposal. They may allow these activities, they may not allow them, or they may reconsider the issues at a later date. Regardless of their ultimate decision, ***the Fed and Treasury should be allowed to follow the process Congress created only a year-and-a-half ago***.

All Consumer Protections Are Maintained and Bank Safety and Soundness Is Protected

If banking organizations offer real estate services, consumers would actually have more protections under the law than they do today. ***All rules applicable to real estate brokers, including all state licensing, qualification and sales practices will apply equally to bank-affiliated real estate agents.***

NAR has raised the specter of customers being taken advantage of as a result of conflicts of interest that may potentially arise when a real estate broker is affiliated with a lender. The simple fact is that the exact same potential for such abuse occurs, for example, each time an agent from Century 21, Coldwell Banker, ERA (all of whom are affiliated with Cendant) GMAC, Long & Foster or USAA helps a customer buy or sell a house. And yet, although these integrated real estate organizations, as well as state banks in many states and credit unions, have been selling real estate and funding mortgages for years, there has been no outcry about these conflicts of interest. Why? — Because the Real Estate Settlement Procedures Act ("RESPA")[7] requires realtors affiliated with lenders to disclose that fact to customers before the purchase occurs.

[7] 12 U.S.C. § 2601 *et seq*

The RESPA disclosure,[8] which must be on a separate piece of paper, must state the relationship between the real estate agent and the lender and provide the estimated charges or range of charges of the lender. It must also notify the customer that he or she is *not* required to use the lender and is free to shop around for a better deal. If the real estate agent requires the use of its affiliated lender, that agent violates the kickback and unearned fee provisions of Section 8 of RESPA. The customer is expected to sign an acknowledgement of the disclosure.

In addition, consumers have even more protections when their real estate agent ***is*** affiliated with a banking organization. This is because banks and bank holding companies and their subsidiaries and affiliates are subject to the anti-tying provisions of the Bank Holding Company Act.[9] These restrictions prohibit banks and their affiliates from conditioning the provision of credit on the purchase of another product or service.

Bank involvement in real estate brokerage and management services is also consistent with safe and sound banking. First, providing these services will help to diversify the income stream of these institutions and help to improve their financial base. Real estate brokerage and management services are activities where a bank acts only as an agent for a third party, ***but does not take an ownership position in the property***. By their very nature, agency activities pose very little risk to the safety and soundness of depository institutions.

Second, under the GLB Act, the bank regulators must deem a bank to be well-capitalized and well-managed before a banking organization can participate in any of the expanded financial activities permitted under the GLB Act, including real estate brokerage and property management. Thus, only financially strong institutions would be authorized to engage in these activities.

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[8] The requirement for affiliated business disclosures is part of the regulations of the Department of Housing and Urban Development that implement RESPA. 24 C.F.R. § 3500.15.
[9] Section 106(b) of the Bank Holding Company Act Amendments of 1970.

Third, banking organizations are also subject to Sections 23A and 23B of the Federal Reserve Act, which limit the amount of credit and other forms of support that a bank could provide to a real estate brokerage affiliate or subsidiary. Such limits ensure that the safety and soundness of the bank will not be negatively impacted by its subsidiaries or affiliates.

Fourth, many banking organizations already have years of experience in providing real estate activities. In fact, the purchase, sale and management of real estate are frequently significant aspects of fiduciary asset management in many bank trust departments. Because banks currently have trust personnel who provide real estate brokerage and management services on a daily basis to trust customers, providing the service outside of the trust department would not be a new activity in which banking organizations lack expertise. Thus, no new safety and soundness issues would be raised.

Finally, it is important to note that a precedent already exists for bank involvement in real estate activities. In over half of the states, state banking regulators have the authority (either explicitly, through regulatory interpretations, and through wildcard and parity statutes) to allow state-chartered banking organizations to engage in real estate activities (see the attached state-by-state listing developed by the Conference of State Bank Supervisors). Moreover, savings institutions and credit unions already have brokerage authority. Allowing banks the same rights and privileges should enhance the competition for real estate services.

Conclusion

Mr. Chairman, increased competition clearly benefits consumers and the economy. It is a catalyst for innovation, more customer choice, better service, and competitive prices. I have no doubt that my customers and my community would benefit if my small bank could offer these services.

In fact, promoting competition in financial markets was the primary motivation for passage of the GLB Act. Congress also recognized the need for regulatory flexibility in an environment where the bright lines between financial activities and between financial providers has all but disappeared. Providing real estate brokerage and property management is no exception to this rule. We strongly believe that both real estate brokerage and property management meet the criteria set forth by Congress in enacting the GLB Act.

Not only would consumers benefit from bank involvement in real estate services, but also bank involvement is consistent with safe and sound banking. All consumer protections that apply to independent realtors would apply to bank-affiliated real estate agents – plus bank-affiliated agents would be subject to additional anti-tying regulations. And because brokerage and management are agency activities, they pose no financial risk to the safety and soundness of the banking organization.

I thank you, Mr. Chairman, for this opportunity to present the views of the American Bankers Association.

Real Estate Brokerage

State	Available	Subsidiary Required	Authorization	Citation
Alabama	Yes	No	Statute	5-5A-18
Alaska	No	No	Statute	AS 06.05.272(d)
Arizona	Yes	Yes	Statute	ARS 6-184(A)(7)
Arkansas	No	No	Not Authorized	NA
California	Yes	No	Statute	Cal. Corps. C. Sec. 206 and Cal. Fin. C. Sec. 751.3
Colorado	No	No	Not Authorized	N/A
Connecticut	Yes[1]	Yes[1]	See Footnote[1]	See Footnote[1]
Delaware	Yes	Yes	Statute	Title Five, Delaware Code § 761(a)(3)
DC	Yes[2]	NR	NR	NR
Florida	Yes	Yes	Statute	658.67(6), F.S.
Georgia	Yes	No	Statute & Regulation	7-1-261, operational powers of banks; Regulation 80-5-5
Guam				
Hawaii	No[3]	No	Wildcard	NR
Idaho	Yes	No	Wildcard	NR
Illinois	No	No	Not Authorized	N/A – Express prohibition exists within IL wildcard statute that grants parity with federal thrifts, among other entities
Indiana	Yes	No	Statute	I.C. 28-1-3.1
Iowa	Yes	No	Statute	Section 524.802
Kansas	No	No	Not Authorized	N/A
Kentucky	No	No	Not Authorized	N/A
Louisiana	No	No	Not Authorized	N/A
Maine	Yes[4]	No	Regulation	Maine 9B Section 131(6-A); 9B Section 446-A; Regulation #7
Maryland	No	No	Not Authorized	N/A
Massachusetts	Yes	Yes	Statute	G.L.c.167F §2 p. 25
Michigan	Yes	No	Statute	MCL 487.14104(1)
Minnesota	No	No	Statute is Silent	N/A
Mississippi	No	No	Not Authorized	N/A
Missouri	No[5]	No	Not Authorized	N/A
Montana	No	No	Not Authorized	N/A
Nebraska	Yes	No	Incidental Powers Regulation	Department Statement of Policy #9
Nevada	No	No	Not Authorized	N/A
New Hampshire	Yes[6]	No	Regulation & Wildcard	Ban 525, Federal Savings Associations Powers
New Jersey	Yes	No	Regulation	NJAC 3:11-11.5(a)(4)

Real Estate Brokerage

State	Available		Subsidiary Required		Authorization	Citation
New Mexico	Yes		No		Wildcard	58-1-54
New York	No		No		Not Authorized	N/A
North Carolina	Yes		Yes		Statute	NCGS 53-47c(3)
North Dakota	No		No		Not Authorized	N/A
Ohio	No		No		Not Authorized	N/A
Oklahoma	No		No		Not Authorized	N/A
Oregon	No		No		Not Authorized	N/A
Pennsylvania	Yes		No		Parity Statute	7P.S. §201
Puerto Rico	No		No		Not Authorized	N/A
Rhode Island	No		No		Not Authorized	N/A
South Dakota	Yes		No		Interpretation	51-A-2-14(3)
Tennessee	Yes		No		Statute, Regulation & Wildcard	T.C.A. § 45-2-607(d); Regulation Chpt. 0180-19; 45-14-105
Texas	Yes		No- Preferred		Statute	Texas Real Estate License Act
Utah	No		No		Not Authorized	N/A
Vermont	No		No		Not Authorized	N/A
Virginia	No		No		Not Authorized	N/A
Washington	Yes[7]		No		Wildcard Authority	RCW 30.04.127
West Virginia	No		No		Not Authorized	N/A
Wisconsin	Yes		No		Statute & Regulation	221.0322 & DFI -Bkg#16
Wyoming	Yes		No		Statute	W.S.13-2-101(a)(xiii) & W.S.13-2-101(a)(xii)
SUMMARY	Yes	No	Yes	No		
	26	25	6	45		

NR: Not Reported.
N/A: Not Applicable.

[1] The activity is permissible through a subsidiary. It may also be conducted directly under the authority provided by the "closely related activities" statute [Sect 36a-250(a)(40) of CT General Statutes] or "wild card" statute [Sect. 36a-250(a)(41) of the CT General Statutes]. To date, The Department has not formally acted on any request to conduct the activity.

[2] The DC Office of Banking & Financial Institutions is presently modernizing its bank, mortgage banking, trusts, savings and loan, and credit union statutes, regulations and chartering requirements.

[3] Real estate brokerage is expressly prohibited by state law, unless otherwise allowed through wildcard authority because the activity is permissible for national banks.

[4] The Department would review on a case-by-case basis and refer to Sections 416 and 419-A of the Maine Banking Statute, together with Regulation 7.

[5] Depository Trust Companies have real estate brokerage powers under 362.105

NAHB
NATIONAL ASSOCIATION OF HOME BUILDERS

Statement of Robert Nielsen
on behalf of the
National Association of Home Builders

Before the Subcommittee on Financial Institutions and Consumer Credit

United States House of Representatives
Washington, DC

May 2, 2001

ACROSS THE COUNTRY HOME BUILDERS CARE

Good morning Chairman Bachus and members of the subcommittee. My name is Bob Nielsen and I am President of Shelter Properties a company, which builds and owns multifamily housing properties. I am pleased to be here today to express the views of the 203,000 members of the NAHB on a proposal by the Federal Reserve Board and United States Treasury Department to permit financial holding companies and financial subsidiaries of national banks to act as real estate brokers and managers.

Mr. Chairman, in sum we oppose this proposal because the real estate brokerage and management activities are commercial in nature, anticompetitive and would adversely affect consumers.

Background

The Federal Reserve Board and the United States Treasury Department have jointly requested public comment on a proposal to permit financial holding companies and financial subsidiaries of national banks to act as real estate brokers and managers. The rule would determine that real estate brokerage and management services are financial in nature or incidental to financial activity and are, therefore, permissible activities for financial holding companies and financial subsidiaries of national banks.

The Gramm-Leach-Bliley (GLB) Act amended the Bank Holding Company and National Bank Act to allow a bank holding company that qualifies as a "financial holding company," and financial subsidiaries of national banks (with certain exceptions), to engage in a broad range of activities that are defined by the GLB Act to be financial in nature. The GLB Act also permits financial holding companies and financial subsidiaries of national banks to engage in other activities that the Federal Reserve Board determines, by regulation or order and in consultation with the Secretary of Treasury, to be financial in nature or incidental to a financial activity. This latter provision is the basis for the proposal.

Neither real estate brokerage nor real estate management was permitted for bank holding companies or national banks under previous law or regulation. However, the agencies state that the GLB Act's "financial in nature or incidental" test is broader than the former "closely related to banking" standard.

NAHB strongly believes that financial holding companies and national bank subsidiaries should not be permitted to engage in these activities. Both real estate management and real estate brokerage are inherently commercial, not financial activities or incidental to a financial activity, and therefore are not legally permissible for financial holding companies or national bank subsidiaries. Furthermore, allowing banking organizations to engage in either real estate management or brokerage activities would harm consumers as well as real estate managers and brokers that are not affiliated with banking organizations.

Real Estate Management Services

Real estate management services are inherently commercial activities.

The term real estate management applies to a broad range of activities involved in the day-to-day management of real estate, including:

- preparing and overseeing marketing plans;
- finding tenants;
- negotiating leases and lease renewals;
- developing operating and capital budgets;
- preparing maintenance and repair schedules;
- purchasing equipment, materials and supplies;
- supervising employees or contractors that perform repair, maintenance and landscaping work;
- inspecting properties;
- handling payrolls of employees involved in management activities;
- collecting rents;
- making principal, interest, insurance and tax payments;
- holding security deposits;
- preparing property reports, records and financial statements;
- handling a range of legal proceedings;
- monitoring compliance with federal, state and local regulations; and,
- obtaining required licenses and permits.

Frequently, firms with property management operations also engage in real estate investment and development.

While some of these activities involve the handling of money, most do not, and all relate to the day-to-day operation of a commercial enterprise. In fact, any financial activity that occurs in connection with the management of real estate is incidental to the commercial real estate activity. If such endeavors were to be classified as financial or incidental to a financial activity, then it is difficult to see what business activities would not fall under such a heading. We do not believe that this is the type of distinction that Congress intended in their decision in the Gramm-Leach-Bliley Act to maintain a clear separation between banking and commerce. Real estate management activities are primarily commercial in nature and, therefore, cannot legally be open to financial holding companies or national bank subsidiaries.

The involvement of banking organizations in real estate management would create an unfair competitive environment for real estate management firms not affiliated with banks.

Allowing financial holding companies and national bank subsidiaries to engage in real estate management activities would deprive the current participants of this industry of their rights to compete in the marketplace without undue influence by banking entities. There would be several distinct problems stemming from conflicts of interest that banking organizations would face in financial decision-making related to real estate management activities. First of all, real estate management entities seeking bank financing are required to disclose proprietary data on rental market conditions and projections, business plans, and data on specific properties, including lease terms and schedules. This would be a particularly sensitive situation for a real estate development firm that has a property management unit, in that data on both development and management operations could be required to support loan decisions. Such information, if shared by the bank with its property management affiliate, could give that entity a tremendous competitive edge over other property management firms in the market. The bank real estate management unit could factor such information into its planning and operations to benefit the properties it manages at the expense of others in the market. For example, the bank property management unit could target marketing efforts to residents with expiring leases in units managed by the loan applicant, using information obtained on the lease terms and conditions of those residents.

Conflicts of interest for banks with property management affiliates also could arise in the process of making financing and other decisions involving companies with competing property management operations. Banks may be unwilling to provide financial services, including loans, to competitors, or may provide such services at terms that are less attractive than those extended to its property management affiliate. In addition, there is the possibility that banks could make the use of its real estate management services an explicit or implied condition for approval of a loan to a property developer or owner.

Bank-affiliated property management firms could also price their services below market as a "loss-leader" to attract demand deposit and other business from property owners, again putting unaffiliated companies at a competitive disadvantage.

Real Estate Brokerage

Real estate brokerage activities are also inherently commercial in nature.

Real estate brokerage involves bringing together parties for the purpose of accomplishing a real estate purchase, sale, exchange, lease or rental transaction. Activities include:

- negotiating contracts on behalf of one or more of the parties in the transaction;
- making listing and marketing arrangements;
- locating buyers, sellers, lessors, and lessees;
- collecting and holding earnest money deposits;
- providing and conveying information for one or more parties in the transaction;
- providing advice to one or more of the parties in the transaction; and,
- participating in the closing of the transaction.

While the sale and purchase of properties involves financial transactions, real estate brokers are not the primary participants in that aspect of the process. Real estate brokers provide services that facilitate the transfer of tangible assets, which are associated with commercial activities, not intangible assets, which define financial transactions. As with real estate management services, the financial components of real estate brokerage are incidental to the commercial elements and classifying the activity as financial or incidental to a financial activity would lead to the inclusion of virtually every service enterprise in that category. Real estate brokerage, therefore, is fundamentally a commercial endeavor and financial holding companies and national bank subsidiaries are not legally entitled to engage in such activities, which clearly do not satisfy the test of financial or incidental to a financial activity.

The involvement of banking organizations in real estate brokerage would have adverse consequences for consumers.

It has been argued that "one-stop" shopping in real estate purchase/sales transactions is beneficial for consumers. However, we have found no evidence to support this contention. In fact, NAHB believes that there are significant risks that consumers utilizing brokers affiliated with banking organizations could incur higher costs in their real estate transactions. A key problem with the vertical integration of brokerage services in banking organizations is that consumers utilizing such services would not have access to the independent source of information they have in using an independent real estate broker. Without fuller information, there would exist the strong possibility that consumers would incur higher than necessary costs for their real estate transactions. Furthermore, consumers might believe they would not be approved for financing of their real estate purchase if they do not use the brokerage and other services of affiliates of the banking organization.

Conclusion

NAHB believes that both real estate management and brokerage are primarily commercial activities and are, therefore, not legally permitted for financial holding companies and national bank subsidiaries, even under the broader standard of "financial in nature or incidental to a financial activity" that was established in the Gramm-Leach-Bliley Act. In addition, we believe that permitting banking organizations to undertake real estate management and brokerage activities would unfairly alter the competitive marketplace and unnecessarily increase costs for consumers.

Consumers Union

Publisher of Consumer Reports

TESTIMONY OF
FRANK TORRES

Before the
Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

May 2, 2001

Consumers Union[1] appreciates the opportunity to appear today before the Financial Services Committee to present the consumer perspective on the rule proposed by the Federal Reserve Board and the Department of the Treasury. The proposed rule would allow financial holding companies and financial subsidiaries of national banks to engage in real estate brokerage by determining that real estate brokerage is an activity that is financial in nature or incidental to a financial activity.

Consumers Union has long been involved in financial issues related to the modernization of this country's banking laws, including the passage of the Gramm-Leach-Bliley Act (GLB), discussions of the laws related to home-buying, mortgages and home equity loans, and efforts to curb predatory lending practices.

Consumers Union participated in a group of lenders, other consumer advocates, regulators and other industries involved in the real estate and mortgage industries - the self-named "Mortgage Reform Working Group." While the group did not reach ultimate conclusions of how to reform the Real Estate Settlement Procedure Act (RESPA) or the Truth-in-Lending Act (TILA), the work of the group proved useful to the Federal Reserve Board and Housing and Urban Development in their report to Congress on RESPA/TILA reform. Consumers Union was also a member of the Joint Treasury/HUD Task Force on Predatory Lending. Currently, Consum... ...nion serves as a member of the Consumer Advisory Committee of the Federal Re... ...e Board.

Everyone agrees that buying a home is ...e largest single transaction most consumers will

[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* (with approximately 4.5 million paid circulation) regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

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make. It is vital for the regulators and Congress to focus on whether consumers will, in fact, benefit from changes in the marketplace that will occur should the rules be changed. Consumer advocates across the country are struggling with the challenge of making sure the process of buying a home is fair for consumers. This includes looking at the practices of the real estate industry as well as those of lending institutions.

The proposed rule raises several issues. Is this allowable under GLB? Will consumers benefit? Should the rule move forward, what reasonable expectations, including regulatory measures, are warranted prior to the banks being allowed to act as real estate brokerages?

IS THIS EXPANSION OF BANK POWERS ALLOWABLE UNDER THE GLB ACT?

What the Law Says

The GLB Act allows banks to engage in activities that the Department of the Treasury and the Federal Reserve Board determine to be financial in nature or incidental to a financial activity. The GLB Act includes a list of factors to be used in making the determination of whether an activity if financial in nature or incidental to a financial activity, including the purposes of the GLB Act; changes in the marketplace; changes in technology for delivering financial services; and whether the proposed activity is necessary or appropriate to allow a bank to compete effectively, efficiently deliver financial information through technological means.

Congress also included a list of activities that are considered to be financial in nature. Those include lending, exchanging or safeguarding money; insuring against loss; providing financial advisory services; selling financial instruments; and, underwriting.

Congressional Intent

The debate over financial modernization lasted an entire decade. Congress had ample opportunity to specifically address an issue of this magnitude during that time. Instead, Congress did not include real estate brokerage on the list of permissible activities.

Further, during the debate on financial modernization, Congress was willing to include language in the law so that financial institutions were not disadvantaged because of changes in technology that might effect the marketplace. Congress did not appear to be endorsing the notion that financial institutions be allowed to engage in a commercial activity simply because they petitioned the regulators. Rather Congress tried to anticipate the possibility of future developments. Simply put, Congress did not want to reopen the discussion on financial modernization with each new development in technology.

The GLB Conference Report itself states that providing health care is not incidental to the business of insurance. It seems that this is an appropriate analogy. If the proposed rule is adopted it would seem that if a payment is made for a product or service that business would be considered "incidental" to banking and banks would be permitted to engage in that business. It would be hard to imagine any business activity that would not be fair game for the banks.

Recent Congressional action supports the notion that the GLB Act was not intended to allow banks to become real estate brokers. It is our understanding that over 150 members of Congress, including members of the Financial Services Committee, have sent letters to the regulators urging them to reject allowing banks to engage in real estate brokerage. The letters make it clear that Congress did not intend for banks to engage in this type of activity when it passed the GLB Act.

One letter stated that allowing banks to become real estate brokerages "would be a significant departure from prior positions regarding holding company involvement in real estate activities and a significant shift from the intent of the Gramm-Leach-Bliley Act." The letter concluded, "Congress specifically decided not to permit holding companies and banks to expand the definition of financial activities to include real estate."

Concerns about Mixing Banking and Commerce

The proposed rule raises the issue of mixing banking and commerce. One of the potential consequences of financial modernization – the mixing of banking and commerce – has been debated at length. During consideration of the GLB Act, many members expressed concern of breaking down all of the firewalls between financial institutions and commercial activities.

The GLB Act specifically focused on allowing banks, insurance companies and securities firms to combine, but was careful not to stretch the reach of financial institutions. In fact, one of the letters sent by House members on the proposed rule emphasized that Congress "rejected" the mixing of banking and commerce of the type that would occur if banks were allowed to engage in real estate brokerage activities.

Consumers Union shares those concerns. During the debate on financial modernization, Consumers Union testified that:

> While banking laws need to be modernized, Congress needs to ensure that they are done in such a way as to preserve the safety and soundness of the banking system. Congress must be vigilant to protect against a repeat of the same mistakes that forced taxpayers to pay billions to bailout the savings and loan industry.
>
> We oppose permitting federally insured institutions to combine with commercial interests because of the potential to skew the availability of credit, conflict of interest issues, and general safety and soundness concerns from expanding the safety net provided by the government. The federally insured deposit insurance system should not be put at risk merely because companies have holding in commercial firms or want to expand into such businesses.

CONSUMER BENEFIT IS QUESTIONABLE

Today's Marketplace

Banks already have a significant presence in providing financial services related to the home buying process, including the exploding subprime market. According to bank regulators between 1993 and 1998 the number of subprime mortgage loans originated by banks increased by 551 percent. Banks are either merging with subprime lenders, or have subprime affiliates. Under the GLB Act banks are guaranteed the ability to offer a wide range of financial products to their borrowers. Some of those products may be good, others, like credit life insurance, more of a rip-off. But financial institutions have the ability to offer those products to consumers.

Improving the Marketplace

The consumer advocate community is not convinced of the benefits of "one-stop-shopping." Too often, the promises of better quality at a lower cost for consumers are not seen by the majority of consumers in the marketplace. In fact, consumers face substantial burdens in dealing with lenders where the lenders already have a presence in the real estate marketplace.

Consumers Union and other consumer advocates are trying to figure out ways to allow consumers to shop for loans, including giving consumers the ability to compare loans on the basis of rates and fees. A consumer would then be able to compare one lender's products with other lenders and use that information to negotiate the cost of the loan. That would be a sign that the marketplace was competitive. Most of our efforts to change the business practices to allow consumers to shop have been rebuffed by the financial service community.

The proposed rule may erode some of a consumer's ability to effectively shop for the best loan. They may wind up "stuck" with the loans offered by their agent/lender or feel as though their options are limited. There will be no incentive for the agent/lender to offer products from other lenders even though those loans may be better suited for the borrower. Steering could be a problem as it is unclear if existing anti-tying prohibitions would apply to the relationship between the bank's real estate agent services and their mortgage lending business. Even if the anti-tying provisions did apply, they would likely be difficult, if not impossible, to enforce, especially given the potential for "capturing" consumers by banks acting as real estate agents.

The financial services industry implies that consumers will benefit from their participation in the marketplace as real estate brokers. Yet, the banks have not provided any concrete assurances that consumers will benefit through lower costs or better products. Many consumers have not yet realized the banking industry promises to consumer in the aftermath of GLB. Many consumers have not seen lower banking costs. Bigger banks are still charging higher fees. ATM fees have increased substantially. There are more charges now than ever related to credit cards. With regards to mortgage loans there seems to be a push to sell more products - some, like credit life insurance, are of little or no benefit to consumers but generate high fees for the bank. In addition, many consumer advocates are concerned that consumers in the subprime market may qualify for better priced loans. Those consumers are often never referred up the credit ladder, even if it is to an affiliate of the lender.

Problems with Predatory Lending

Predatory lending continues to be a problem for consumers, particularly lower and moderate income working families and the elderly. The banking industry has opposed almost every attempt by consumer advocates to curb predatory lending practices.

The Federal Reserve Board has identified several elements related to predatory lending:

- Making unaffordable loans based on the assets of the borrower rather than on the borrower's ability to repay an obligation;
- Inducing a borrower to refinance a loan repeatedly in order to charge high points and fees each time the loan is refinanced;
- Concealing the true nature of the loan obligation from an unsuspecting or unsophisticated borrower.

We and other consumer advocates support in general the rules recently proposed by the Federal Reserve Board to lower the HOPEA triggers and to expand reporting under the Home Mortgage Disclosure Act (HMNDA). The hope is that both of these actions will limit abusive practices in the short-run. The Board's description of predatory lending, as well as its proposed regulatory changes, are consistent with the direction provided by the House Banking Committee last year during a hearing on predatory lending. Then-Chairman Jim Leach offered a list of "Anti-Predatory Lending Precepts," and urged the regulators to exercise their authority under existing laws to prevent some of these practices. Using existing authority is not the complete answer to predatory lending, but it is a step in the right direction.

Instead of embracing these modest proposals, or other efforts at the state and local level to curb predatory lending, the financial services community has sought repeatedly to defeat those proposals. Often we hear the cry from lenders that they will "reduce credit availability" if predatory lending practices are prohibited. If lenders cannot abide by restrictions on predatory lending, then they should not make the loans. We agree with the Federal Reserve Board that "A borrower does not benefit from ...expanded access to credit if the credit is offered on unfair terms or involves predatory practices." An institution should not have to rely on predatory lending practices to survive. If the financial marketplace is competitive, there should be lenders willing to make subprime loans.

The financial institutions that petitioned the Federal Reserve Board to conduct this rulemaking are some of the largest in the country. Yet, they have provided no concrete assurances of substantive improvements for consumers regarding their lending practices. What assurances are there that if the rule is adopted and those financial institutions will engage in real estate activities that consumers will see any improvements?

Other Improvements to the Marketplace Should be Made

In addition to expanding the scope of HOPEA and HMDA under existing authority, Congress should specifically mandate other requirements to level the playing field and to give consumers the tools they need to effectively shop for a home and mortgage and to truly ensure that the marketplace is competitive.

One way Congress could help consumers is to require mortgage lenders to provide a guaranteed interest rate and closing costs before collecting any application fees from consumers. This was one of the recommendations made by HUD in its report to congress. The report specifically stated that, "consumers be provided guaranteed information about closing costs, interest rate and points early enough so that they can shop and make informed choices."

The proposed rule may have an impact on the application of Section 8 of the Real Estate Settlement Procedures Act (RESPA). Section 8 prohibits kickbacks between lenders and mortgage brokers for steering customers. One of the problems consumers face in obtaining a mortgage is the inability to effectively shop for a loan on the basis of the interest rate and fees. Consumers cannot realistically apply for more than one loan at a time. Some proposals have been put forward to guarantee closing costs. While this is a first step, unless a consumer can shop for an interest rate, effective shopping for a mortgage will not be a reality.

As long as a borrower must pay a significant sum of money before a guaranteed loan price is provided to the consumer, there is nothing to prevent the price of a loan from being increased prior to closing. If the agent and lender were part of the same company, it is questionable whether the same prohibitions against referral kickbacks would apply. If, however, a consumer could shop for several loans at the same time, and receive firm price quotes, it would not matter what fees were paid, either to a broker or through internal bookkeeping mechanisms. The borrower would be able to compare firm prices between lenders and choose the best deal.

Increased Privacy Intrusions

Every day American consumers seem to lose more of their privacy. Poll after poll show that the public is concerned about the lack of privacy and want lawmakers to do something about it. Efforts to reign in the collection and use of personal data fail to provide full protections. Some existing laws, like the GLB Act are riddled with loopholes to allow the continued collection and use of personal data under most circumstances.

Real estate transactions can provide a wealth of personal information about the homebuyer and the homebuyer's family. Specific preferences, likes and dislikes, any aspect of the homebuyer's decision making process would be fair game for the financial institution. That data could be paired with other data already held by the financial institution and used to create consumer profiles.

A recent survey conducted by the National Association of Realtors showed that consumers are concerned about the potential loss of privacy if banks are allowed to act as agents. This is consistent with the opinion of the American public generally when it comes to privacy.

Consumer concerns about the privacy of their information might be diminished if Fair Information Practices were put into place to govern the collection and use of data. Often consumers are not aware that data is collected about them, or that the information they provide, for example, to open an account, is then used for another unrelated purpose. Consumers typically do not have access to the data that is collected about them.

Congress should examine how consumer information is collected and used during real estate transactions. To the extent privacy intrusions exist in the current marketplace then protections should be put in place. Before financial institutions are allowed to engage in real estate brokerage additional safeguards will likely be necessary to provide consumers with the privacy safeguards they want.

IF THE RULE PROCEEDS CONSUMERS WILL NEED SAFEGUARDS

Need for Further Examination of the Impact of the Proposed Changes

We urge Congress to send a clear signal to the regulators that they should not move ahead with the rulemaking until there has been ample time to conduct additional investigations, including further hearings if necessary, into the questions raised by this proposal. Enough questions exist about the implications of the proposed rule – the mixing of banking and commerce, concerns about safety and soundness, competition in the marketplace, benefits (or lack of benefits) for consumers, concerns about increased loss of privacy, and the need for consumer safeguards -- that additional examination and scrutiny is prudent. If the regulators determine that this is a permissible activity under GLB Act, consumer safeguards should be put in place prior to the rules taking effect.

Hold Hearings on How Consumers are Treated in the Real Estate Marketplace

We also call on Congress to hold hearings on the real estate marketplace. In addition to RESPA/TILA and predatory lending, other issues warrant examination. Are consumers being treated fairly by real estate brokers? Are commissions priced fairly?

Now may be the time to discuss a "Home Buyers Bill of Right" that would include substantive protections dealing with the relationship between a consumer and the various elements of the real estate industry, including agents, appraisers, lenders and the like. Such a proposal should include a suitability requirement for mortgages and home equity loans.

CONCLUSION

Consumers already face a tough time in the marketplace when they go to obtain a mortgage. Congress should not allow the regulators to change the rules in a way that could potentially harm consumers and offer no real benefit. Consumers could be harmed if appropriate safeguards are not put into place prior to those changes.

TESTIMONY OF JOHN ROEBUCK, CAI, AARE, CHAIRMAN OF THE BOARD OF THE NATIONAL AUCTIONEERS ASSOCIATION BEFORE THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT OF THE HOUSE FINANCIAL SERVICES COMMITTEE May 2, 2001

Chairman Bachus, members of the subcommittee, I am John Roebuck, Chairman of the Board of the National Auctioneers Association and President of John Roebuck and Associates of Memphis, TN. I am accompanied today by NAA's legislative consultant, Curtis Prins, a former staff director of this subcommittee, who is well known to many of you.

The National Auctioneers Association is strongly opposed to the proposed regulation issued by the Federal Reserve System and the Treasury Department that would allow banks to engage in real estate brokerage.

To illustrate NAA's deep concern about the proposal I should point out, that to my knowledge, this is the first time ever that my trade association has testified before Congress. We have not been here before because of our belief that we should not testify unless it was something of a life threatening nature to our industry. The proposed regulation will most assuredly cripple if not kill the real estate auction business as far as companies such as mine are concerned and that is why I am here today.

Many of NAA's 6,000 members conduct not only real estate auctions but also operate traditional real estate brokerage businesses. All of our members are small businesses in the true meaning of the word.

In our business we face competition from other auction firms and real estate companies. That competition comes from companies that do not hold an unfair competitive advantage. However, if the regulation goes into effect, our industry will be faced with a whole new area of competition from banks who will clearly hold an unfair competitive advantage.

Banks have access to customer deposits and cheap loans from the Federal Government and from other banks. Real estate auction companies do not. Banks have access to financial information and customer lists that they can use for marketing purposes. Real estate auction companies do not. Banks have the ability to attract customers with a variety of financial incentives. Real estate auctions companies do not.

Let me describe a scenario that may well develop if this regulation is adopted. A bank customer calls his bank to inquire about a mortgage loan for a new home he is purchasing. The banker wants to know if the customer is selling an existing home. When the answer is yes, the banker tells the customer that the bank will not only make the loan for the new home but will provide the financing at a lower rate if the banks gets to sell the existing home. How do I compete with that type of offer?

I know that the proposed regulation states that anti-tying regulation will prevent banks from forcing customers to accept certain products and services in order to obtain other products and services. First, let me ask, how often have the bank regulators enforced the anti-tying regulations? Even if bank customers know they are not required to buy certain products, they still buy the products, because they fear that they will be denied a loan if they don't. You only have to look at the penetration rate that banks have in selling credit life insurance in connection with loans to realize that, regulations or not, borrowers don't want to take a chance of losing a loan because they would not buy credit life.

While I can list numerous other reasons why banks will have an unfair advantage in competing for real estate brokerage business, including auctions, I want to spend my remaining time trying to understand how the Federal Reserve and Treasury were able to put forth such a regulation.

I am just a small businessman from Memphis, TN. and like the rest of the 6,000 members of NAA I am confused by the process that led to the real estate regulation.

I have great faith in the Members of Congress. They are elected by the people of their districts or state. They are accessible, concerned about their constituents' views and willing to listen, as witness this hearing. On the other hand, government agencies are not made up of a single elected person, have narrow if any constituencies and are hardly accessible. Certainly, the Fed and Treasury have asked for written comments about the proposed reg but that does not allow groups such as NAA to truly express their concern.

I know that the Gramm-Bliley-Leach Act gives the Fed and Treasury some latitude in determining what activities are permissible for bank holding companies and national banks. I will leave it to the legal minds to argue the technicalities of that grant. It is my belief that such authority was given only where narrow interpretations of the law were needed-not to write new legislation.

Perhaps the most significant question surrounding this whole issue is this. If Congress wanted banks to engage in real estate activities, why didn't it grant those powers, clearly and unmistakable? Surely, if Congress intended banks to have such powers, there would be no need for this hearing. There would be a clear record of Congress granting real estate powers to banks and probably even a recorded vote.

I ask this question of the two agencies. How many members of Congress have sent comment letters saying that Congress, in passing Gramm-Bliley-Leach, clearly intended banks to have real estate brokerage powers? On the other hand, Congress has voted several times against allowing banks into the real estate brokerage business.

Congress passed the Glass-Steagall Act in 1933, some 68 years ago. If it took that long for Congress to decide what businesses banks should be in, is it logical that Congress would take just over a year to hand over the authority to make legislative banking powers decisions to two un-elected agencies?

Mr. Chairman, I applaud you and other members of this subcommittee who have written to the two agencies to question their actions. In your letter you state, "far-reaching and controversial financial policies should be determined through legislation, not through regulation." Those 14 words are the clearest testimony that will be heard at this hearing.

One of the tenets of President Bush's administration is to return government to the people. I truly hope that happens. But when the people see government agencies legislate against a large segment of the people, then we must question if such a return is possible.

This regulation is not just to decide banking powers. It is far more than that. If this regulation is finalized, it will mean that Congress has given up its basic power to legislate in the area of banking. Is that what you really want to happen?

Thank you very much.

THE FINANCIAL SERVICES ROUNDTABLE

Testimony of

Richard J. Parsons
Executive Vice President
Bank of America Corporation

on behalf of

The Financial Services Roundtable

Before the

United States House of Representatives
Financial Services Subcommittee on
Financial Institutions and Consumer Credit

on

The Joint Proposal by

The Board of Governors of the Federal Reserve System

and

The United States Treasury Department

To Allow Financial Holding Companies
and National Bank Financial Subsidiaries
to Engage in Real Estate Brokerage
and Real Estate Management Activities

May 2, 2001

Good Morning, Chairman Bachus, Ranking Member Waters, members of the Subcommittee. My name is Richard J. Parsons, I am Executive Vice President of Bank of America, and I am testifying on behalf of The Financial Services Roundtable. The Roundtable is a national association that represents 100 of the largest diversified financial services companies, including 64 commercial banking and thrift organizations, 12 insurance companies, seven securities or investment companies, and four other types of diversified financial services companies. A complete list of the Roundtable's members is attached. *(See Attachment A).* Member companies participate through their Chief Executive Officer and other senior executives nominated by the CEO.

Roundtable member companies provide fuel for the engine of our nation's economy, accounting directly for $17 trillion in managed assets, $6.6 trillion in assets, and $462 billion in revenue, and providing 1.6 million jobs.

The Roundtable appreciates this opportunity to discuss the joint proposal of the Federal Reserve Board and the Treasury Department to permit financial holding companies and national bank financial subsidiaries to engage in real estate brokerage.

The Roundtable strongly supports adoption of the regulation for three reasons. First, permitting financial holding companies and national bank subsidiaries to enter the real estate brokerage business is good for consumers. Second, it is good for the financial services industry. Third, real estate brokerage is a financial activity consistent with the Gramm-Leach-Bliley Act.

Consumers Will Benefit From the Proposed Rule

The Roundtable strongly believes that consumers will be the real winners if the regulation is adopted. Adoption of the rule will increase competition in the brokerage industry. More competition means more consumer choice, lower prices, and better customer service.

Adoption of the rule is necessary to meet consumer demand for one-stop shopping for all their home buying needs. In 1999, a study of recent home buyers was conducted on behalf of the National Association of Realtors ("NAR"). *(See Attachment B).* According to this NAR study, 76 percent of home buyers said that getting all or some of their home buying services handled through one company was appealing. Eighty-one percent supported the idea of one-stop shopping for all of their home buying services and were evenly split on whether the best provider of such services would be a bank, a realtor, or a mortgage company, although a slight majority stated they would prefer a bank as the one-stop shopping provider. The NAR study concluded that 77 percent would consider using a bank for those one-stop shopping services in future transactions.

If the proposed rule is adopted, consumers will be able to receive in one location all the services necessary to buy a home: pre-approval for a mortgage loan; assistance in finding a home; a mortgage loan after a contract to purchase a home has been signed; and insurance for the property (including title insurance, property insurance, and private mortgage insurance) prior to closing. The consumer's life will be simplified and services will be expedited. Many traditional real estate brokers have already responded to consumer demand for one-stop shopping and are offering mortgage and insurance services in addition to real estate brokerage services.

Opponents of the regulation contend that consumers are worried about their privacy when purchasing a home. Concluding that brokerage is a financial activity in fact enhances consumer privacy. While customers of financial holding companies and national banks are entitled to the GLB Act's far-reaching privacy protections, customers of real estate brokers currently have no federal privacy protections. If adopted, the regulation will afford brokerage customers the same federal privacy protections now afforded to bank customers. Thus, real estate brokers will have to disclose their privacy policies to home buyers and will be prohibited from sharing certain nonpublic information about the home buyer with any nonaffiliated third parties unless the home buyer has been given notice and the opportunity to opt out of such information sharing.

Opponents also argue that allowing financial holding companies to offer real estate brokerage services could result in harmful tying and other coercive practices. This argument is easily refuted by the fact that many brokerages are already affiliated with mortgage lenders, insurers, thrifts, credit unions, and state banks, and there is no evidence of these harmful practices occurring.

Moreover, existing banking laws are more than adequate to preclude these types of practices within a financial holding company. Sections 23A and 23B of the Federal Reserve Act prohibit a bank from making below-market loans to any affiliates or subsidiaries, including those that would be engaged in real estate brokerage, and severely restrict a bank's ability to provide equity contributions and other support to the real estate brokerage affiliate.[1] Furthermore, Section 8 of the Real Estate Settlement Procedures Act[2] and the anti-tying provisions of Section 106 of the Bank Holding Company Act Amendments of 1970[3] preclude any coercive practices against the bank's (or brokerage's) customers. A brokerage customer of a financial holding company will in fact enjoy greater protection than a brokerage customer of a less regulated competitor, such as a traditional real estate brokerage firm or finance company.

The Financial Services Industry Will Benefit From the Proposed Rule

Adoption of the regulation is prudent for the financial services industry. Traditional real estate brokers are now actively competing with banks and financial holding companies by offering financial services – in particular, loans and insurance. Of the ten leading real estate brokers cited by *Realtor* magazine, nine provide financial services and compete with financial holding companies by offering loans or insurance. According to the "1999 National Association of Realtors Profile of Real Estate Firms," 56 percent of its residential real estate brokerage firms with more than 50 agents are involved in mortgage lending. *(See Attachment C).*

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[1] See 12 U.S.C. §§ 371c, 371c-1 and 1828(j).
[2] 12 U.S.C. § 2607.
[3] 12 U.S.C. § 1971, *et seq.*

Additionally, federal thrifts[4] and credit unions[5], as well as state-chartered banks in 26 states, are permitted to act as real estate brokers. *(See Attachment D for data on the states).* In fact, the only financial institutions that uniformly cannot engage in real estate brokerage are financial holding companies and national banks. We ask only that this playing field be leveled, and that financial holding companies and national banks be permitted to compete as well.

There is no evidence that consumers have been hurt in any way by the current involvement of these depository institutions in the real estate brokerage industry, and there is no evidence that depository institutions dominate the brokerage industry or enjoy significant market power. Prohibiting real estate brokers from affiliating with financial holding companies and national bank subsidiaries seems to be out of step with the current marketplace.

Moreover, brokerage poses little risk to the banking system. A real estate brokerage company does not act "as principal," but rather acts in an "agency" capacity by being an intermediary in a transaction between a buyer and a seller. Banks have historically been permitted to conduct "agency" activities either directly or through affiliates. Financial holding companies are currently permitted to provide their customers with a wide array of agency services, including travel, securities, commodities, and insurance brokerage.

Real Estate Brokerage is a Financial Transaction Consistent with the Gramm-Leach-Bliley Act

Finally, the Roundtable believes that the proposed regulation is entirely consistent with the Gramm-Leach-Bliley Act of 1999 ("GLB Act"), which was designed to modernize and expand the financial services marketplace. The specific purpose of financial modernization, as stated in the preamble to the GLB Act, was to "*enhance competition in*

[4] See 12 C.F.R. §§ 559.4(e)(3) (thrift service corporations), 584.2-1(b)(8) (thrift affiliates).
[5] See 12 C.F.R. § 712.5(g) and (p).

the financial services industry by providing a prudent framework for the affiliation of banks, securities firms, insurance companies and *other financial service providers*, and for other purposes." [emphasis added]

Title I of the GLB Act created the "financial holding company" structure and permitted financial holding companies to conduct a much broader range of financial activities than was historically permissible for bank holding companies. The GLB Act permits financial holding companies to engage in all activities that have been determined by the Federal Reserve Board to be "financial in nature," or incidental or complementary to a financial activity.[6] Given the historical experience of the Glass-Steagall Act and the practical limitations of creating a rigid regulatory structure, the GLB Act established a flexible framework that allows regulators to respond to changes in technology, the marketplace, and consumer demand. The GLB Act provides the Board, in consultation with Treasury, the authority to expand the statutory list of financial activities.[7]

In December 2000, the Board and Treasury issued a joint notice of proposed rulemaking to determine that real estate brokerage and real estate management activities are "financial in nature" or "incidental to a financial activity" and, consequently, permissible for financial holding companies and national bank subsidiaries. By issuing this proposal, the agencies are simply fulfilling their obligation under the GLB Act to ensure that financial holding companies and national banks have the ability to compete with other financial service providers. Assertions that the Board and Treasury may not rule on real estate brokerage are without basis under the GLB Act. Such an interpretation of the GLB Act would turn the clock back on financial modernization.

The broader scope of the "financial in nature" standard for non-bank activities of financial holding companies is reflected in both the legislative history of the GLB Act and the diverse range of activities that financial holding companies are currently

[6] See Bank Holding Company Act § 4(k)(1)(A), (B) (12 U.S.C. § 1843(k)(1)(A), (B)).
[7] See Bank Holding Company Act § 4(k) (12 U.S.C. § 1843(k)).

permitted to conduct. First, the Conference Report to the GLB Act states that "[p]ermitting banks to affiliate with firms engaged in financial activities represents a significant expansion from the current requirement that bank affiliates may engage only in activities that are closely related to banking."[8] Second, financial holding companies are currently permitted to conduct a broad range of activities that bank holding companies are prohibited from conducting, such as unrestricted securities underwriting, merchant banking, unrestricted insurance underwriting, unrestricted insurance agency, travel agency, and acting as finder.[9] The financial services marketplace has changed dramatically in the past 30 years, and what may have been inappropriate for bank holding companies in the early 1970s may be entirely appropriate for the diversified financial holding companies of the early 21st century.

With respect to the permissibility of real estate brokerage under the GLB Act, the GLB Act permits the Board to define certain activities as "financial in nature," including the "transferring ... for others financial assets other than money or securities." The Roundtable believes that real estate brokerage is exactly that type of activity. Real estate is the largest financial asset owned by most consumers and is the most widely used source of collateral for consumers seeking credit. The purchase of real estate is the largest financial transaction for most consumers. For many, real estate is the largest source of individual wealth; the decision to purchase, sell, and finance real estate plays a significant part in retirement planning. Real estate is conferred special status under federal and state tax laws, distinguishing real estate from other large-ticket items. For these reasons, we believe that real estate is a "financial asset" and that brokerage is "financial in nature."

In addition, the GLB Act defines as "financial in nature" all activities that involve "arranging, effecting, or facilitating financial transactions" for others.[10] Real estate brokerage is part of the overall financial activity of helping a consumer receive pre-

[8] H.R. Conf. Rep. No. 106-434, at 153 (Nov. 2, 1999).
[9] See BHCA § 4(k)(4) (12 U.S.C. § 1843(k)(4)); 12 C.F.R. § 225.86(d)(1) (finder activities).
[10] See Bank Holding Company Act § 4(k)(5)(B)(iii) (12 U.S.C. § 1843(k)(5)(B)(iii)).

approval for a mortgage loan, find a home, appraise the property, receive final approval for the mortgage loan, close the transaction, and insure the home with property insurance, title insurance, and, in certain cases, private mortgage insurance. Each of the services and products offered as part of the overall financial transaction are integrated with one another. Such integration is reflected in several ways. First, consumers frequently enlist the services of a real estate broker at the same time that they seek the products of a mortgage lender and an insurance agency. Second, consumers generally pay the loan fees, the realtor's commission, and the initial insurance premiums together at the closing. Third, the documents that consumers sign with respect to the mortgage loan, real estate brokerage, and the insurance generally cross-reference and are conditioned upon each other.

Moreover, in determining whether an activity is "financial in nature," the GLB Act also requires the Fed to consider "changes in the marketplace in which financial holding companies compete" and whether such activity is "necessary or appropriate" to allow a financial holding company or its affiliates to "compete effectively with any company seeking to provide financial services in the United States."[11] As highlighted earlier, approval of the regulation is both necessary and appropriate to allow financial holding companies to compete effectively with real estate brokerage companies, as well as with federal thrifts, credit unions, and state banks in 26 states.

As a result, the Roundtable firmly believes that real estate brokerage is "financial in nature," consistent with the GLB Act. At the very least, the Federal Reserve Board and Treasury should find that it is "incidental to a financial activity." Banks and financial holding companies are involved in virtually every other aspect of residential and commercial real estate transactions, ranging from rendering advice; acting as a finder; appraising the property; issuing abstracts of title and performing title searches; selling and underwriting hazard, title, and mortgage guaranty insurance; arranging or providing financing; providing loan closing, settlement, and escrow services; and securitizing

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[11] Section 103(a), new Bank Holding Company Act ("BHCA") section 4(k)(3)(A)&(D)(i).

mortgage loans or underwriting and selling mortgage backed securities. Clearly, acting as a real estate broker is incidental to the performance of these other real estate related services that are already considered to be "closely related to banking" or "financial in nature."

Conclusion

In conclusion, we strongly support the regulation and believe that its adoption would be a win-win proposition for consumers and for the financial services industry. The regulation would allow financial services companies to build alliances with real estate brokerages, creating tremendous benefits for consumers, including one-stop shopping, lower prices, more choice, and increased competition.

The Roundtable respectfully asks the Committee to allow the Board and Treasury to complete their pending rulemaking. This process is an appropriate delegation of authority to the regulators, who have expertise and experience in this area and are fully equipped to consider all the substantive issues. This process allows for a decision on the merits.

Thank you. I will be glad to try to respond to any questions that Members of the Committee might have.

Attachment A

THE FINANCIAL SERVICES ROUNDTABLE

MEMBER COMPANIES

COMPANY	**CITY**
ABN-AMRO North America, Inc.	Chicago
AEGON USA, Inc.	Baltimore
Allfirst Financial, Inc.	Baltimore
AMCORE Financial, Inc.	Rockford
American General	Houston
AmSouth Bancorporation	Birmingham
Associated Banc-Corp	Green Bay
BancorpSouth, Inc.	Tupelo
BancWest Corporation	Honolulu
Bank of America Corporation	Charlotte
Bank of New York Company, Inc., The	New York
Bank of Tokyo-Mitsubishi Trust Company	New York
BANK ONE CORPORATION	Chicago
BB&T Corporation	Winston-Salem
Capital One Financial Corporation	Falls Church
Centura Banks, Inc.	Rocky Mount
Charles Schwab Corporation, The	San Francisco
Chubb Corporation, The	Warren
Citigroup Inc.	New York
Citizens Financial Group, Inc.	Providence
City National Corporation	Beverly Hills
Comerica Incorporated	Detroit
Commerce Bancshares, Inc.	Kansas City
Compass Bancshares, Inc.	Birmingham
Credit Suisse First Boston	New York
Cullen/Frost Bankers, Inc.	San Antonio
Deutsche Bank	New York
Edward Jones Investments	St. Louis
F.N.B. Corporation	Hermitage
Fidelity Investments	Boston
Fifth Third Bancorp	Cincinnati
First Commonwealth Financial Corporation	Indiana
First National of Nebraska	Omaha
First Tennessee National Corporation	Memphis

COMPANY	CITY
First Union Corporation	Charlotte
First Virginia Banks, Inc.	Falls Church
FleetBoston Financial Corporation	Providence
Ford Motor Credit Company	Dearborn
Fortis, Inc./Assurant Group	New York/Atlanta
Fulton Financial Corporation	Lancaster
General Motors Acceptance Corporation	Detroit
Goldman Sachs Group Inc.	New York
Harris Bankcorp, Inc.	Chicago
Hartford Financial Services Group, Inc., The	Hartford
Hibernia Corporation	New Orleans
Household International, Inc.	Prospect Heights
HSBC USA, Inc.	New York
Hudson United Bancorp.	Mahwah
Huntington Bancshares Incorporated	Columbus
IBJ Whitehall Financial Group	New York
ING Americas	Atlanta
Jefferson-Pilot Corporation	Greensboro
J.P. Morgan Chase & Co.	New York
KeyCorp	Cleveland
M&T Bank Corporation	Buffalo
Marshall & Ilsley Corporation	Milwaukee
Mellon Financial Corporation	Pittsburgh
Mercantile Bankshares Corporation	Baltimore
Michigan National Corporation	Farmington Hills
National City Bancorporation	Minneapolis
National City Corporation	Cleveland
National Commerce Bancorporation	Memphis
Nationwide Insurance Enterprise	Columbus
North Fork Bancorporation, Inc.	Mattituck
Northern Trust Corporation	Chicago
Old Kent Financial Corporation	Grand Rapids
Old National Bancorp	Evansville
Pacific Century Financial Corporation	Honolulu
PNC Financial Services Group, The	Pittsburgh
Provident Bankshares Corporation	Baltimore
Provident Financial Group, Inc.	Cincinnati
Prudential Insurance Company of America	Newark
Raymond James Financial, Inc.	St. Petersburg
Regions Financial Corp.	Birmingham
Riggs National Corporation	Washington, D.C.
Sky Financial Group	Bowling Green
State Farm Mutual Insurance Companies	Bloomington

COMPANY	CITY
SunTrust Banks, Inc.	Atlanta
Synovus Financial Corp.	Columbus
TCF Financial Corporation	Wayzata
U. S. Bancorp	Minneapolis
United Bankshares, Inc.	Charleston
USAA	San Antonio
Wachovia Corporation	Winston-Salem
Washington Mutual, Inc.	Seattle
Wells Fargo & Company	San Francisco
Whitney Holding Corporation	New Orleans
Zions Bancorporation	Salt Lake City
Zurich U.S.	Los Angeles

Attachment B
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Appendix I

MEMORANDUM

TO: National Association of REALTORS®

FROM: Hart-Riehle-Hartwig Research

DATE: August 23, 1999

SUBJECT: Findings of a Survey among Recent Home Buyers

From July 25 to 30, 1999, Hart-Riehle-Hartwig Research interviewed a representative cross section of 801 home buyers nationwide who purchased their homes within the past two years. This report presents the key findings of this research, for the internal strategic purposes of the National Association of REALTORS.

Key Findings

1. Most people find the concept of one-stop shopping to be appealing. The intensity of support for the idea, however, is not as strong as it was in 1997.

- **Three in four recent homebuyers (76%) say that getting all or some of their home-buying services handled through one company is appealing.**
- **Only one in three (31%), however, find this idea to be very appealing.**

The shift in the recent-home-buyer audience may explain the decline in intense support. In 1997, the market was comprised largely of core homebuyers, who were willing to buy even in a poor housing market and who were service- and hassle-conscious. In 1999, recent homebuyers represent an expanded pool that includes many non-traditional homebuyers, for whom the home purchase is a financial stretch, and who are, therefore, more price-conscious when it comes to services.

2. Recent home buyers may have been satisfied with the process that led them to a successful home purchase, but they still see the need for many improvements in that process. One would expect these people to be strong defenders of the status quo, but they endorse changes that would make the home-buying process quicker, cheaper -- particularly regarding upfront costs -- more convenient, and more objective. Changes that would allow companies (specifically real-estate companies) to receive referral fees for homebuyers' using services that they recommend, however, are not seen as measures that would significantly improve the home-buying process.

- **Two in three (65%) recent home buyers feel that a change in current rules in order to give companies a financial incentive to put together a one-stop shopping package for home buyers would be an improvement in the home-buying process** -- 33% feel that it would be a big improvement.
- **Two in three (68%) recent home buyers say that banning the practice of mortgage lenders' requiring a large, upfront payment from mortgage applicants would be an improvement** -- 48% say that it would be a big improvement.
- **Two in three recent home buyers (67%) believe that increasing the use of Internet applications to reduce the time it takes for a home buyer to get full mortgage approval would be an improvement** -- 39% believe that this would be a big improvement.
- **And nearly two in three (62%) recent home buyers say that increasing the use of computer credit scoring to make mortgage approval decisions more objective would be an improvement** -- 33% say that this would be a big improvement.

Support for one-stop shopping is on par with support for such popular changes as eliminating upfront mortgage application costs. **Clearly, however, fewer new homebuyers endorse one-stop shopping when it is described from the point of view of real-estate companies or companies in general. The one-stop shopping idea works much better when described in terms of what is in it for the home buyer -- price reduction and a quicker, more objective process.**

3. The current pool of recent home buyers is highly cost-conscious. Because of the past few years' strong housing market, more non-traditional homebuyers are in the market, and these buyers often are stretching their family finances in order to buy a home. When asked to evaluate several reasons for supporting the idea of one-stop shopping, home buyers today put saving money, along with making the process easier, at the top of their list. Neither brand-name service nor speed of process prove as compelling as *lower cost* and *simpler process* in framing the concept of one-stop shopping for home-buying services.

- **Today's home buyers are much more likely than they were in 1997 to say that the idea of saving money through discount-priced one-stop services has a great deal of merit.** In fact, four in five (81%) recent home buyers believe that this idea has at least some merit, including 50% who say that the idea has a great deal of merit -- representing a 17-point increase since 1997, when 33% said that the idea had a great deal of merit.
- **Home buyers are as likely now as they were two years ago to support the concept of one-stop shopping if it means dealing with only one person in order to achieve a more simplified home-buying process.** Four in five (81%) recent home buyers say that there is merit in this idea, including 50% who say that the idea has a great deal of merit -- nearly the same proportion as in 1997 (52%).
- **Many homebuyers see merit in the idea of one-stop shopping if it would speed up the home-buying process.** More than three in four (78%) recent home buyers believe that this idea has merit, including 44% who believe that it has a great deal of merit.
- **Receiving a standard level of service does not prove as important as other reasons for having one-stop shopping.** Although two in three (63%) new home buyers believe that the idea of brand-name service has merit, only one in four (23%) say that it has a great deal of merit.
- **Repeat buyers are more loyal to the status quo.** First-time home buyers range from six to 10 percentage points more likely than repeat buyers to endorse each change as having a great deal of merit.
- **Core home buyers -- the kind of people who buy a home even in a bad housing market -- are perhaps the best targets for one-stop shopping.** Today, in a hot market that attracts many non-traditional buyers, nearly half (49%) of all recent homebuyers say that if they had to go through the whole process again, they would use a company that offers one-stop shopping. In 1997, however, when the housing market was much less vibrant than it is today, two in three (66%) new homebuyers said that they would use a company that provides one-stop shopping.

That nearly half of today's home buyers would consider using a company that offers one-stop shopping may be due to core home buyers' interest in relieving the hassles of home buying, although it also may reflect non-traditional home buyers' cost-consciousness.

4. When recent home buyers consider where to go for one-stop shopping, only realtors, banks, and mortgage companies make sense to them. About two in three recent homebuyers say that they would consider each of these types of companies for one-stop shopping, with about one in four strongly considering each one. Companies that are not given widespread consideration include insurance firms (39% strongly/ somewhat consider), religious or fraternal organizations (36%), stock and mutual fund brokerage firms (33%), Internet Web sites (28%), tax preparation companies (24%), shopping clubs or price clubs (15%), and credit card companies (10%). About half (51%) of recent homebuyers would consider using a professional organization of which they are a member to provide one-stop shopping for home-buying services. **In the one-stop shopping world, realtors are royalty.**

5. A majority (58%) of new home buyers say that they would consider using a company that offers a simplified, one-stop shopping process of referrals or recommendations for service providers. Only one in three recent homebuyers express serious concern about referral fees. Fewer than one in five (18%) homebuyers, however, say that they would strongly consider using such a service. And as further evidence of the tenuous support of such a service, only one in five (20%) recent home buyers indicate that they would be willing to pay more for one-stop shopping through a real estate company, down from one in three (32%) home buyers willing to do so two years ago.
Recent homebuyers have several concerns about the one-stop shopping concept. Their biggest worries include the idea that this would give one company a financial incentive to recommend only home-buying service providers who pay them a commission or referral fee -- a majority (54%) of home buyers say that this would give them a great deal of concern -- and the expectation that home buyers would pay a higher price for the convenience of handling the services through one company

(53%, up from 37% in 1997). Another major concern among recent homebuyers is that one-stop shopping would give one company too much control over the home-buying process – half (49%) say that this is a great concern to them. **These findings suggest that the new, non-traditional homebuyers have pocketbook concerns – namely, whether they are getting the best price for each service.**

6. Overall, half (49%) of all recent home buyers would prefer to use a one-stop shopping company if they could go through the home-buying process again. Certain demographic groups are more likely than others to prefer using a one-stop shopping company rather than shopping around for each service.

- **Recent homebuyers who live in large cities are more likely to prefer a one-stop shopping company (55%) than are those who live in the suburbs (45%) or in a medium/small city (49%).**
- **Recent homebuyers in the traditional homebuyer market (those under age 50) are much more likely to prefer one-stop shopping (52%) than are their older counterparts (41%).**
- **White new home buyers (50%) are more likely than are blacks (43%) to say that they prefer one-stop shopping for home-buying services.**
- **Recent home buyers with less than a college degree (52%) are more likely than their neighbors who have at least a bachelor's degree (46%) to prefer one-stop shopping.**

7. A majority (55%) of recent home buyers report that the home-buying process was either excellent or very good. Slightly less than half (44%) say that the process was either just okay (32%), not very good (7%), or poor (5%).

- **Among the groups most satisfied with their recent home-buying process are 18- to 29-year-olds (68% excellent/very good), new home buyers age 50 and over (61%), those with an annual income less than $65,000 (60%), and those who live in a suburb (58%) or a medium/small city (57%).**
- **Among those least satisfied with their home-buying process are 30- to 49-year-olds (48% just okay, not very good, poor), those with an annual income less than $65,000 (47%), and residents of large cities (49%).**

That nearly half of all recent homebuyers say that they were not happy with their home-buying experience shows that there is room for improvement and change.

8. Most home buyers are not adverse, per se, to using service providers recommended by real estate agents. In fact, in most cases in which the real estate agent recommended a service provider (with the exception of homeowners insurance providers), home buyers were at least two-and-a-half times more likely to use the provider recommended than not.

- **Recent home buyers were four times more likely to use a home inspector recommended by a real estate agent (43%) than to use a home inspector other than the one recommended by the agent (10%).**
- **Recent home buyers were four times more likely to use a title insurance company recommended by a real estate agent (42%) than to use one other than was recommended (10%).**
- **Recent homebuyers were four times more likely to use an appraiser recommended by a real estate agent (37%) than to use a different appraiser (9%).**
- **Recent home buyers were more than two times more likely to use a mortgage company recommended by a real estate agent (35%) than to use another mortgage company (14%).**
- **Recent home buyers were five times more likely to use a termite inspector recommended by a real estate agent (34%) than to use one other than was recommended (7%).**
- **Recent homebuyers were four times more likely to use a settlement attorney recommended by a real estate agent (25%) than to use a different one (6%).**

Hart-Riehle-Hartwig Research FINAL
1724 Connecticut Avenue, NW Interviews: 801 recent homebuyers
Washington, DC 20009 Dates: July 25-30, 1999
(202) 234-5570

Study #5522 N.A.R. July 1999

Please note: all results are shown as percentages unless otherwise stated.

1a. Which of the following phrases best describes your involvement in the home-buying process?

You were the sole decisionmaker	20		[139]
You were one of the primary decisionmakers	78	CONTINUE	
You played a major role in researching and recommending, but the decision was made by somebody else	2		
You played little or no role in the decision, and the decision was made by someone else	-	TERMINATE	
Refused	-		
Not sure	-		

1b. Is this the first home you have purchased? **(IF "NO", ASK:)** How many homes in total have you bought in your life, including the one you just bought?

Yes, this is the first home purchased	34	[140]
No, two homes, including current purchase	26	
No, three homes	19	
No, four homes	9	
No, five or more homes	12	
Not sure/refused	-	

1c. Did you get a mortgage loan to purchase your home?

Yes, got mortgage loan	90	[141]
No, did not get mortgage loan	10	
Not sure/refused	-	

2a. You have just been through the home-buying process. From a homebuyer's point of view, how would you rate the process overall--is the overall home-buying process for homebuyers excellent, very good, just okay, not very good, or poor?

Excellent	13	[142]
Very good	42	
Just okay	32	
Not very good	7	
Poor	5	
Not sure	1	

2b. Thinking about the real estate agent who was the most involved with you in your recent home purchase, would you rate the job that the real estate agent did for you as excellent, very good, just okay, not very good, or poor?

	7/99	5/97	
Excellent	31	43	[143]
Very good	30	25	
Just okay	15	15	
Not very good	4	2	
Poor	4	5	
Not sure	16	10	

(READ ITEM) -- did the real estate agent who helped you buy your home recommend a list of possible service providers or assist you in finding someone to provide this service? **(IF "YES," ASK:)** Did you use someone recommended by the real estate agent, or did you use someone other than the ones recommended by the agent?

THIS TABLE HAS BEEN RANKED BY THE PERCENTAGE WHO SAY THEY USED SOMEONE THE AG RECOMMENDED

	Agent Recommended			
	Used Someone Agent Recommended	Used Someone Other Than Ones Agent Recommended	Agent Did NOT Offer Recommendation Or Assistance In Finding This Service	Not Sure
Home inspector	43	10	37	10
Title insurance company	42	10	36	12
Appraiser	37	9	41	13
Mortgage company	35	14	44	7
Termite inspector	34	7	46	13
Settlement attorney	25	6	54	15
Homeowners insurance	16	15	60	9

As you have just been through the traditional home-buying process, let me describe a new home-buying process that is being discussed. Under current law, it is illegal for anyone, based on a recommendation or endorsement, to receive a commission, a finder's fee, or a referral fee when a home buyer chooses to use one of the services we just mentioned, such as a settlement attorney, home inspector, mortgage, or insurance company. As a result, there is no financial incentive for any company to offer a one-stop shopping program for home buyers that includes referrals to other companies that might provide these services. Under this new law, referral fees could be paid if a homebuyer used the recommended service provider, and those referral fees or commissions would have to be disclosed to the homebuyer in advance. The home buyer would be under no obligation to use any of the services recommended and could shop for their own services if they wanted to, just as they can now.

3a. Suppose you were buying a home. If a company offered to set up a simplified, one-stop shopping process for you, in which they would offer referrals or recommendations for service providers that the home buyer could use, is that something you would consider strongly, consider somewhat, consider a little, or would you not consider using it at all?

Consider strongly	18	[151]
Consider somewhat	40	
Consider a little	17	
Would not consider at all	22	
Not sure	3	

3b. Many different kinds of companies might offer this kind of one-stop shopping for homebuyers. For each one I name, tell me whether you would consider using THAT KIND OF COMPANY for one-stop shopping for a home.

THIS TABLE HAS BEEN RANKED BY THE PERCENTAGE WHO SAY CONSIDER STRONGLY OR SOMEWHAT

	Consider Strongly	Consider Somewhat	Consider A Little	Would Not Consider At All	Not Sure	
A mortgage lender or mortgage provider.....	22	44	14	19	1	[158]
A bank or credit union..................................	26	38	13	22	1	[157]
A real estate company.................................	23	40	14	22	1	[162]
A professional organization that you are a member of..	18	33	13	34	2	[155]
An insurance company	9	30	18	42	1	[161]
A religious or fraternal organization that you are a member of..................................	11	25	11	51	2	[156]
A stock and mutual fund brokerage firm......	6	27	16	49	2	[154]
An Internet Web site..................................	7	21	17	52	3	[160]
A tax-preparation company, such as H&R Block..	4	20	13	62	1	[152]
A shopping club or price club	3	12	14	70	1	[159]
A credit card company.................................	2	8	10	79	1	[153]

3c. Let me read you a list of changes that some people have suggested could be made in the home-buying process. For each item, tell me whether you feel that it would be a big improvement, a small improvement, or whether it would not make any difference to you as a homebuyer.

THIS TABLE HAS BEEN RANKED BY THE PERCENTAGE WHO SAY BIG IMPROVEMENT

	Improvement				
	Big	Small	Would Make No Difference	Would Make Things Worse (VOL)	Not Sure
Ban the current practice of mortgage lenders requiring a large, upfront payment from mortgage applicants, to cover the cost of credit checks, and requiring the mortgage company to pay for checking an applicant's credit..	48	20	24	4	4
Increase the use of Internet applications to reduce the time that it takes for a home buyer to get full mortgage approval............	39	28	27	4	2
Change current rules in order to give companies a financial incentive to put together a one-stop shopping package for home buyers, including inspections, title insurance, and mortgage approval.............	33	32	25	7	3
Increase the use of computer credit scoring to make mortgage approval decisions more objective and less subject to human bias....	33	29	26	7	5
Allow companies to receive a referral fee for home buyers who use home-buying services from partners they recommend, in order to encourage closer cooperation between companies involved in the home-buying process...	13	30	39	11	7
Change current rules in order to allow real estate companies to accept referral fees from their partners when they offer home buyers a brand-name inspection, title insurance, or mortgage services.................	10	29	42	13	6

3d. Suppose you could do it all over again, but this time you had the choice of handling some or all of the steps involved in buying a home--from real estate listings, to the mortgage application, inspections, appraisals, title insurance, legal work, and settlement attorney--directly through one company. If you had that choice, which would you personally prefer?

Option A: Shopping around for each settlement service yourself, OR

Option B: Using a company that offers many settlement services or "one-stop shopping."

	7/99
Option A: Shopping around for each settlement service yourself	40
Option B: Using a company that offers many settlement services or "one-stop shopping"	49
Neither (VOL)	1
Depends/both (VOL)	7
Not sure	3

4a. Overall, how appealing would it be to have the choice of getting some, or all, of your home-buying services handled through one company, instead of individually hiring all of them yourself--very appealing, somewhat appealing, not very appealing, or not appealing at all?

	7/99	5/97		
Very appealing	31	42	CONTINUE	[170]
Somewhat appealing	45	36		
Not very appealing	9	8		
Not appealing at all	13	11	Skip to Q.5a	
Not sure	2	3		

(ASK ONLY OF RESPONDENTS WHO SAY IT WOULD BE "VERY" OR "SOMEWHAT" APPEALING IN Q.4a.)
4b. Would you have been willing to pay more for these services for the convenience of having some or all of the services handled through the real estate company?

	7/99	5/97	
Willing to pay more	20	32	[171]
Not willing to pay more	49	37	
Not sure	7	9	
Not Very/Not Appealing At All/Not Sure (Q.4a)	24	22	

5a. I'd like to read you various reasons why some homebuyers say that they would like to handle some or all of their home-buying services through one company. For each one I read, please tell me how much merit you feel that reason has.

THIS TABLE HAS BEEN RANKED BY THE PERCENTAGE WHO SAY A GREAT DEAL OF MERIT

	A Great Deal Of Merit	Some Merit	Only A Little Merit	No Merit At All	Not Sure	
It would mean just one person to contact, making the process easier to manage for the buyer						[173]
July 1999	50	31	9	9	1	
May 1997	52	30	8	9	1	
The home buyer could save money if companies offer these services at discount prices						[175]
July 1999	50	31	8	9	2	
May 1997[1]	33	41	11	14	1	
It would speed up the home-buying process						[172]
July 1999	44	34	8	13	1	
It means getting one standard level of brand-name service from all the individual home-buying service providers						[174]
July 1999	23	40	17	18	2	

[1] In May 1997, the question was phrased "The home buyer could save money if real estate companies..."

5b. Now I'd like to read you some concerns that people have about getting some or all of their home-buying services through one company. For each one I read, please tell me how much that would concern you.

THIS TABLE HAS BEEN RANKED BY THE PERCENTAGE WHO SAY A GREAT DEAL OF CONCERN

	A Great Deal Of Concern	Some Concern	Only A Little Concern	No Concern At All	Not Sure	
It gives the one company a financial incentive to recommend only those home-buying service providers that pay them a commission or referral fee						[178]
July 1999	54	31	8	6	1	
It would mean that the home buyer pays a higher price for the convenience of handling the services through one company						[176]
July 1999	53	30	9	7	1	
May 1997[1]	37	43	12	7	1	
It would give one company too much control over the home-buying process						[177]
July 1999	49	31	9	10	1	
May 1997[1]	38	34	14	13	1	
It would mean that a company would get referral fees or commissions when home buyers use services that the company recommends						[179]
July 1999	33	34	15	17	1	

[1] In May 1997, the phrasing "real estate company" was used in place of "one company".

6. Suppose you could use this kind of one-stop home-buying process to identify some or all of the individual home-buying services you might use, with the recommended companies cooperating with each other to simplify the home-buying process. Thinking about it again, how appealing would it be to have the choice of getting some or all of your home-buying services handled through one company, instead of individually hiring all of them yourself--very appealing, somewhat appealing, not very appealing, or not appealing at all?

Very appealing	27	[180]
Somewhat appealing	48	
Not very appealing	8	
Not appealing at all	14	
Not sure	3	

7. If you were dissatisfied with one of the services provided, who would you hold most accountable--the one-stop shopping company you used, or the individual service provider recommended by that company?

The one-stop shopping service	51	[208]
The individual service provider	32	
Both equally (VOL)	12	
Not sure	5	

8. Suppose a real estate company offered you one-stop shopping for home-buying services and a law required that company to give you complete disclosure on the amount of any referral fee it would receive if you used a service recommended by them. In that case, how much confidence would you have about handling some or all of those services through that real estate company, instead of hiring each one yourself--a great deal of confidence, quite a bit of confidence, only some confidence, or very little confidence?

Great deal of confidence	16	[209]
Quite a bit of confidence	29	
Only some confidence	35	
Very little confidence	18	
Not sure	2	

9. Finally, thinking about all the issues we have discussed, do you feel that the government should make it easier for any kind of company to offer one-stop shopping services, should it leave the rules as they are now, or should the government put more restrictions on companies' ability to offer one-stop shopping services?

	7/99	5/97[1]	
Make it easier	34	46	[210]
Leave rules the same	41	30	
More restrictions	13	12	
None of them (VOL)	5	4	
Not sure	7	8	

[1] In May 1997, the phrasing "real estate company" was used in place of "any kind of company".

FACTUALS: **Now I have some questions for statistical purposes only.**

F1. In what age groups are you?

18-24	2	[211-212]
25-29	12	
30-34	16	
35-39	21	
40-44	13	
45-49	11	
50-54	9	
55-59	5	
60-64	3	
65 and over	6	
Refused	2	

F2. Are you currently employed?

(IF CURRENTLY EMPLOYED:) What type of work do you do?

(IF NOT CURRENTLY EMPLOYED:) Are you a student, a homemaker, retired, or unemployed and looking for work?

Currently Employed		
Professional/ manager	38	[213-214]
White collar worker	21	
Blue collar worker	18	
Farmer, rancher	-	
Not Currently Employed		
Student	-	
Homemaker	10	
Retired	10	
Unemployed, looking for work	1	
Other	-	
Not sure	2	

F3. What is the last grade you completed in school?

Eighth grade or less	-	[221-222]
Some high school	2	
High school graduate	19	
Some college, no degree	15	
Technical degree	3	
2-year college graduate	11	
4-year college graduate	27	
Postgraduate work, master's degree.	19	
Doctoral/law degree	2	
Not sure/refused	2	

F4. Are you currently single, married, separated, widowed, or divorced?

Single	7	[223]
Married	84	
Separated	1	
Widowed	2	
Divorced	5	
Other	-	
Not sure/refused	1	

F5. Would you describe the area where you live as a large city, a suburb near a large city, a medium to small city, a small town not near a city, or a rural area?

A large city	12	[224]
A suburb near a large city	37	
A medium to small city	24	
A small town not near a city	14	
A rural area	11	
Not sure	2	

F6. For statistical purposes only, we need to know your total household income for 1998. Please tell me which category best represents the total income of all the people in this household in 1998 before taxes were taken out.

Under $5,000	1	[225-226]
$5,000-$9,999	-	
$10,000-$14,999	-	
$15,000-$19,999	1	
$20,000-$24,999	2	
$25,000-$34,999	5	
$35,000-$49,999	15	
$50,000-$64,999	20	
$65,000-$79,999	12	
$80,000-$99,999	10	
$100,000 and over	15	
Not sure/refused	19	

F7. Are you from a Hispanic or Spanish-speaking background? **(IF "NO," ASK:)** What is your race -- white, black, Asian, or something else?

Hispanic	3	
White	86	[227]
Black	4	
Asian	2	
Other	2	
Not sure/refused	3	

F8. How long ago did you buy your home?

Attachment C

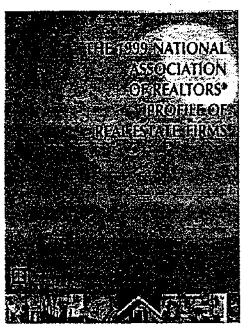

Table I-13
Secondary Real Estate Activity: Mortgage Finance
(Percentage Distribution of Firms)

		Residential Firms			
			number of salespeople		
	All Firms	All	10 or Less	11 - 50	More than 50
Engaged in Activity Within Firm	7%	6%	4%	8%	25%
Engaged in Activity Through Ownership in Another Firm	5	6	3	8	31
Not Engaged in this Activity	80	78	85	72	33
Not Engaged but Planning to Provide	9	10	9	12	12

* Less than one percent

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Preface

Changes in the real estate industry have had significant impact on the operation of real estate firms. In response to those changes, real estate firms are adapting their organizations to meet the industry's challenges. What are some of those challenges?

- How do technology and other recent developments in real estate practices affect firm structure?
- What services do firms use to attract top salespeople and successfully compete in an ever-changing marketplace?
- What relationships with non-real estate firms are being developed to generate new business for the real estate organization?
- How have the trends in franchising impacted the number and size of real estate firms?

To answer these questions, and to provide a clearer understanding of the size and structure of firms represented by its members, the NATIONAL ASSOCIATION OF REALTORS® regularly surveys its membership about various characteristics of real estate firms, including size of firm, type of organization, structure, primary real estate activity and affinity relationships. Results of the survey allow the Association to fashion a Profile of Real Estate Firms. The Profile provides NAR Leadership, State and Local REALTOR® Association executives, and firm owners and managers with information they can use to benchmark their own operations and in planning for future operations.

NOTES TO THE 1999 FIRM PROFILE

During the spring of 1999, the Economic Research Group of the NATIONAL ASSOCIATION OF REALTORS® mailed a six-page questionnaire to 30,000 designated REALTORS® nationwide. A total of 2,624 usable surveys were returned. All information presented in this report is characteristic of 1999. (see methodology)

A note of caution regarding the expressions "all real estate firms" and "typical real estate firm" is called for here. It is hard to define the typical real estate firm. Firm size varies dramatically. There are large firms with hundreds—even thousands—of sales agents, while there are numerous firms with a sales force of just one or two agents. In addition, while the majority of firms specialize in residential brokerage, others deal with commercial brokerage, appraisals, or property management. Consequently, reporting one figure as representative of the entire industry would be inaccurate and misleading. Instead, most results in this 1999 Firm Profile are presented with several cross-tabulations to represent different firm types. Along with the survey results for all real estate firms, there are additional cross tabulations for all residential firms (those firms that derive at least 50 percent of their revenue from residential brokerage), smaller residential firms (ten or less agents), medium-sized residential firms (11 to 50 sales agents), and larger residential firms (more than 50 agents).

In addition, we are in the process of improving the survey methodology. In the past, there has been concern that a greater number of smaller firms respond to the firm survey questionnaire than do larger firms, and so the results of the survey are biased in favor of smaller firms and thus may misrepresent the true "profile" of the industry. In a perfect world, we could correct for this bias by oversampling larger firms and then weighting the responses by the "true" size distribution of real estate firms. Unfortunately, no database—private or government—currently exists that contains information that enables us to derive the true distribution of real estate firms. The NATIONAL ASSOCIATION OF REALTORS® is in the process of developing a membership database. This National REALTOR® Database System (NRDS) will, among other things, allow for oversampling of traditional poor respondents and for the proper weighting of responses.

This report consists of five chapters, each of which focuses on specific practices, structural characteristics, or business arrangements of real estate firms.

REPORT HIGHLIGHTS

It is difficult to define what is the typical real estate firm. A real estate firm may be a single office operation with a sales force of one agent, or a firm with hundreds of offices and thousands of sales agents and brokers. A firm may specialize in residential brokerage or in one of a dozen or so specialties. A brokerage may participate in affinity arrangements, have a relocation department, and have a huge presence on the Internet or they may just offer a narrow menu of services.

With this caveat, the typical real estate firm:

- Is a single-office operation, operating in 1,250 square feet of office space.
- Specializes in residential brokerage.
- Has been in business for 13 years.
- Has a sales force of four agents who are independent contractors.
- Is not affiliated with a franchise organization, and operates as a corporation.
- Provides in-house training and/or educational programs for their sales associates.
- Is a member of at least one multiple listing service (MLS) system.
- Uses cellular phones and pagers to communicate with agents and clients.
- Uses scanners and digital cameras to make sophisticated marketing materials.
- Operates a Web page to attract customers.
- Posts its listings on REALTOR.COM™ and its Web site.
- Generates at least one percent of its business from on-line services such as the Internet and E-mail.

The diversity of real estate firms is most apparent by firm size:

- Eighty-two percent of residential brokerages have a single office, while five percent of firms have more than three offices.
- Fifty-one percent of residential brokerages have a sales force of five agents or less; five percent have a sales force larger than 50.
- Larger residential brokerages—those with more than 50 salespeople—have been in the real estate business twice as long as smaller firms (those with ten or fewer agents).
- Fifty-six percent of larger residential firms and seven percent of smaller residential firms are involved in mortgage activities.
- More than half of firms with more than ten agents have a franchise agreement, compared to just 14 percent of firms with ten or less agents who are affiliated with a franchise organization.

Compared to smaller residential firms, larger brokerages are more likely to:

- Use part-time sales agents.
- Lease at least part of their office space.
- Offer health benefits to their sales force (although they tend not to contribute to the premiums).
- Offer in-house educational training and/or educational programs.
- Use outside sources for educational training.
- Use personal assistants.
- Be a member of a referral or relocation company.
- Participate in affinity arrangements.
- Have a Web site on the Internet.
- Place their listings with on-line services, such as REALTOR.COM™, their firm's Web site, and other sites.
- Generate business from on-line services.

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Chapter 1: Structural Characteristics of Real Estate Firms

What does today's real estate firm look like?

The number of offices a firm operates, the size of its workforce, its experience in the industry, the business specialties practiced, and franchise affiliation are all indicative of a firm's strategy to increase business and its earnings.

The typical real estate firm is, even in this age of industry consolidation, a single-office operation. It has four sales agents, specializes in residential brokerage (that is, generates at least 50 percent of their revenue from residential brokerage), and has been in the business for 13 years.

Larger real estate firms (that is, firms with a sales forces larger than 50) represent a small portion of the number of firms, but represent a sizeable portion of the industry's sales force.

Number of offices

In spite of the continuing trend of consolidation in the real estate industry, the typical real estate firm has remained a single-office operation (See Figure I-1). Eighty-three percent of real estate firms are one-office operations, just a small drop compared to 20 years ago. Ten percent of firms have two offices, while two percent of real estate brokerages have three offices. Four percent of firms have at least four offices—a result consistent with figures in past Firm Profiles.

Residential firms are more likely to be a single-office operation than are firms that specialize in other real estate related activities. Eighty-two percent of residential real estate firms have just one office; 12 percent have two offices. Only five percent of residential firms have more than three offices (See Figure I-2).

A strong real estate market and the continued consolidation of the real estate industry have led to firms adding offices to their operations. Consistent with the trends noted in the 1996 Firm Profile, 12 percent of all real estate firms opened at least one office during 1998; only three percent closed at least one during the same period. Thirteen percent of residential firms opened an office last year, while three percent closed at least one office during the same period (See Table I-1).

Size of Sales Force

The typical real estate firm has four sales agents. In 1999, three out of five real estate firms have five or less sales agents, while just four percent of real estate firms have more than 50 sales agents. Residential brokerages have slightly more agents than do those real estate firms primarily involved in nonresidential activities. Fifty-one percent of residential firms have five or less agents, while five percent have more than fifty sales agents (See Figure I-3 and Table I-2) .

Even though most real estate firms are small, REALTORS® tend to represent larger real estate firms. As found in the 1999 NATIONAL ASSOCIATION OF REALTORS® Member Profile, the majority of REALTORS® are affiliated with a firm of at least 20 sales agents. Those firms with a sales force of more than 50 sales agents represent 38 percent of REALTORS®.

Minority Ownership and Sales Force

Nine percent of real estate firms are at least partly owned by a member of a racial or ethnic minority. There appears to be little difference in the degree of minority ownership among real estate firms.

Nearly a third of real estate firms have sales agents and/or brokers who are members of a racial or ethnic minority (See Table I-3 and Figure I-4). Not surprisingly, nine out of ten larger residential real estate brokerages—which have large sales staffs—have sales associates who are members of a minority. Blacks are the most widely cited minority reported as a part of a firm's sales force.

Years in the business

Today's real estate firms have been in the business longer than brokerage firms have in the past (See Table I-4 and Table I-5). A typical firm in the real estate industry today has been in the business for 13 years (See Figure I-5). In 1983, that figure was nine years. Thirty percent of all real estate firms, including 28 percent of residential real estate firms, have been in business for more than 20 years. Twelve percent of all real estate firms, including 12 percent of residential brokerages, have been in business for two years or less.

As would be expected, larger firms tend to have been in the industry for longer periods of time. Residential brokerages with more than 50 agents have been in business for twice as long as firms with ten or fewer agents.

Primary Real Estate Specialty

Residential brokerage is the dominant specialization of real estate firms (See Figure I-6). More than three-quarters of real estate firms generate at least 50 percent of their revenues from residential brokerage. This proportion of real estate firms primarily focused on residential real estate is consistent with that found in earlier surveys (See Table I-6).

Nearly ten percent of real estate firms generate the majority of their revenues from other forms of real estate activities. These activities include commercial/ industrial brokerage and farm/land brokerage. The remaining 14 percent of firms are involved in some sort of non-brokerage activity. These non-brokerage activities include property management, appraisal, building/development, and mortgage finance.

Firms that specialize in residential brokerage tend to be larger than firms involved in other specialties. The typical residential brokerage has five sales agents, while other real estate brokerages and firms that are not brokerages (such as firms interested in mortgage services, property management, etc.) have a median of two sales agents.

Other Business Activities

A relatively small group of real estate firms conduct non-real estate related activities that complement the firms' primary business focus (See Table I-7). The most widely cited business activity is business brokerage (17 percent)

(See Table I-8), where real estate firms are not only involved in selling real estate but also in selling businesses. Other frequently cited other business activities include insurance brokerage , mortgage operations, and escrow services (See Table I-9, Table I-10, Table I-11, Table I-12, Table I-13, Table I-14 and Table I-15).

The larger the firm, the more likely that it will be involved in other business activities. For example, 56 percent of residential firms with more than 50 agents are involved in mortgage activities, compared to just seven percent of residential firms with ten agents or less.

Firms may either offer these services from within the firm or are engaged in the activity through ownership in another firm. Half of residential firms that offer mortgage services do so through in-house operations, while the other half offer such services through ownership in another firm.

Franchises

Through the 1980s and early 1990s, an increasing number of real estate firms became affiliated with franchises (See Table I-16 and Figure I-7). However, through the mid- to late 1990s, the growth of franchise affiliation has stopped. In 1999, 22 percent of real estate firms are affiliated with either a national or regional/local franchise. Twenty-seven percent of residential firms are affiliated with a franchise. Larger firms are more likely to be affiliated with franchises. More than half of residential firms with at least 11 agents are affiliated with franchises compared to just 11 percent of firms with ten or less agents.

Thirty-eight percent of the nation's sales force is affiliated with franchised firms in 1999. In 1983, the proportion was 30 percent. Given that larger firms tend to be franchised, the higher proportion of sales agents representing franchised firms relative to the number of firms is not surprising.

The typical franchised firm has been affiliated with its franchiser for eight years (See Table I-17). For the typical franchised residential firm, the length of the affiliation rises to nine years. Nearly two out of five franchised firms have been with their present franchiser for more than ten years. On the flip side, 27 percent of franchised firms have been affiliated with their franchiser for three years or less.

Franchised firms have been in the real estate business slightly longer than non-franchised firms. The typical franchised firm has been in business for 15 years, compared to 13 years for non-franchised firms.

Firms decide to affiliate with a franchise for a variety of reasons (See Table I-18). They may be attracted by a franchiser's ability to offer better advertising exposure, offer better training, and assist in recruiting sales agents. Most franchised firms report that franchisers are successful in meeting these goals. For example, nearly three quarters of franchised firms feel that the franchise affiliation improved their name recognition considerably, while half feel that the franchise has considerably improved the ability to generate listings.

As with many other business decisions, the ultimate goal for joining a franchise operation is to improve profitability (See Table I-19 , Table I-20 and Figure I-8). Seventy-two percent of franchised real estate brokerages feel that their franchise affiliation has improved their profitability. Larger firms are more likely than are smaller firms to report that their franchise affiliation has led to higher profits.

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Chapter 2: Organizational Characteristics of Real Estate Firms

Real estate firms have several organizational characteristics that affect the way in which they operate. These features include a firm's legal organization, the relationship a firm has with its sales force, and the amount of office space used by the company. This chapter presents the most recent information on these organizational characteristics.

Some of the most dominant organizational traits of real estate firms include the following:

- Fifty seven percent of real estate firms are corporations.
- Most have a sales force comprised of independent contractors.
- An almost equal proportion of firms own their office space as lease their office space.

Legal Organization

A real estate firm can be a corporation, a partnership, or a proprietorship. The key difference in these three types of organizational structures is the income tax treatment of the firm.

Under a corporate arrangement, companies expense salary and bonuses of the owners to reduce the taxable income of corporations. Therefore, the real estate (or other) firm pays taxes on its income at a corporate rate and the owners pay taxes on their salary at their personal rates.

In contrast, owners of a proprietorship or partnership pay taxes at the owner's personal income tax rate. Historically, corporations have been popular among real estate firms because of the limited liability and exposure to personal assets, in addition to the tax treatment of profits.

In 1999, 57 percent of real estate firms operate as a corporation, while 38 percent operate as a proprietorship (See Figure II-1 and Table II-1). Five percent are partnerships. The larger the firm, the more likely the firm operates as a corporation. Nine out of ten residential real estate firms that have more than 50 sales agents operate as corporations.

Working Relationship of the Sales Force

Most real estate firms have an independent contractor sales force. Eighty-five percent of real estate firms report that their sales force comprises independent contractors. Three percent of firms report that their sales force are employees, and five percent of real estate brokerages have a mix of employees and independent contractors as their sales force (See Figure II-2).

With their sales agents and brokers as independent contractors, these firms are not bound by the Fair Employment Act and do not contribute half of the Social Security taxes (FICA) normally paid by most employers. As demonstrated in the next chapter, independent contractors tend to receive few, if any, benefits in the forms of health or life insurance, etc., from the firm they represent.

Residential firms, particularly the medium-sized and larger ones, are more likely to have sales forces that consist of independent contractors (See Table II-2). Ninety-six percent of medium sized residential firms and 93 percent of larger size residential firms classify their sales forces as independent contractors. "Only" 61 percent of non-brokerage firms have sales forces that are comprised of independent contractors.

Part-time Sales Force

Just over a half of real estate firms use part-time agents as a part of their sales force (See Table II-3). The use of part-time sales agents is more prevalent among medium and larger size residential firms.

Sales Force Turnover

In 1998, real estate firms lost an average of 15 percent of their sales force, down from 18 percent in 1990. On the flip side, real estate firms gained an average of 19 percent of their sales forces, leaving a net gain of four percent per firm. This net gain is consistent with that found in other Firm Profiles in the 1990s (See Table II-4 and Figure II-3).

While brokerage firms experienced a net increase in their sales forces during 1998, non-brokerage firms had no net change in their sales force. Franchise firms experienced greater volatility in their sales forces, yet also gained more sales agents compared to non-franchise firms. Finally, smaller residential firms had a net gain in their sales force of four percent, compared to a ten percent increase that larger residential firms sustained.

Office Space Occupancy

In 1999, 54 percent of the total office space occupied by real estate firms is leased (See Figure II-4). Smaller firms are more likely to own their office space, while larger residential firms lease relatively more space.

Forty-seven percent of all real estate firms lease all of their office space (See Figure II-5). Forty-six percent of firms own all of their space, while seven percent of firms have both leased and owned office space. Smaller residential firms are more likely to own all of their office space than are larger residential firms.

Size of Office Space

The typical real estate firm has 1,250 square feet of office space, up slightly from the 1996 Firm Profile. Of course, firms with larger sales forces tend to have larger offices. For example, residential firms, which tend to be larger than other real estate firms, have a median office space of 1,400 square feet.

On average, firms have 7.4 sales people per office, similar to that found in surveys in the mid-1980s. Larger firms tend to have more sales staff in each of their offices. For example, firms with just one office have 6.6 sales people per office, compared to 14.2 sales people per office in firms with four or more offices. (See Table II-5)

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Chapter 3: Firm Practices and Services

Insurance and retirement benefits, in-house training, use of personal assistants, agency, and participation in outside community organizations are all services that real estate firms use to attract top salespeople and customers.

Typically, real estate firms do NOT provide employer-paid benefits to its sales force. This is because most salespeople in real estate companies operate as independent contractors. But thirty-two percent of firms with salaried licensees offer some sort of health benefits to those agents. On the other hand, real estate firms do tend to contribute towards Errors and Omissions (E&O) insurance premiums for their sales force.

By attracting and keeping a productive sales force and building a reputation from satisfied clients, firms can successfully compete with each other in the ever-changing real estate industry.

Insurance and Retirement Programs

Some real estate firms offer benefits as a part of their compensation package. Health insurance, group term life insurance, profit sharing, and pension plans are all benefit programs real estate companies may offer to their sales force or employees. However, real estate companies do not typically provide employer-paid benefits because most firms use independent contractors (See Table III-1).

Eighteen percent of firms with an independent contractor sales force offer health benefits to those sales agents. Thirty-two percent of firms with salaried licensees offer some sort of health benefits to those sales agents, while 30 percent of real estate firms offer health benefits to their administrative staff.

Residential brokerages offer health benefits less frequently than non-residential brokerages. Larger firms are more likely to offer such benefits than are their smaller brethren (See Table III-2).

Of those firms that do offer health benefits, most will pay at least a part of the premium for health coverage for their administrative staff and their salaried licensees. In contrast, independent contractors are generally responsible for paying all of their premiums. Even so, independent contractors who pay for all of their premiums still gain the advantages of buying into a group policy that may offer better benefits at a lower price compared to what they could purchase on their own. (Also, many REALTORS® who are not offered benefits from their real estate firm rely on benefits from other sources such as their spouse's employment benefit package.)

Real estate firms may offer other benefits such as group term life insurance, pension, and disability insurance. As is the case with health insurance, residential brokerages, especially the smaller ones, are less likely to offer such benefits than are other real estate firms (See Table III-3).

Errors and Omissions Insurance

The increasing complexities of real estate transactions and the rising use of litigation in today's society have prompted the need for errors and omissions (E&O) insurance programs to protect sales associates and the real estate firm they represent against potential lawsuits. These policies cover disputes between real estate professionals and their clients. E&O insurance may also provide protection against judgements for actual (not punitive) damages.

Sixty-nine percent of firms with independent contractor licensees offer E&O coverage, while 43 percent of firms with salaried licenses offer such coverage (See Table III-4). Three quarters of residential brokerages offer E&O insurance, with larger brokerages having a greater probability of carrying coverage compared to smaller firms (See Table III-5).

Unlike other benefits offered, real estate firms do tend to contribute towards E&O insurance premiums. Nearly 60 percent of firms pay for at least part of the premiums associated with E&O insurance . Residential brokerages, especially the larger brokerages, are slightly less likely to pay for at least part of the premiums compared to other real estate firms.

There are a variety of reasons why real estate firms decide to cease offering E&O insurance or choose to never offer such insurance (See Table III-6, Table III-7 and Figure III-1). Of those firms that cancel the E&O programs, 24 percent feel the insurance is too expensive, 22 percent believe that it is not necessary, and 17 percent feel it is the salesperson's responsibility to secure such insurance. Similarly, of those firms that have never provided E&O insurance, 26 percent feel the insurance is not necessary, 22 percent believe the insurance is too expensive, and 19 percent feel that E&O insurance is the responsibility of the agents.

Mediation

Mediation offers real estate firms the ability to settle disputes with other agents, clients, and customers without the time and expense associated with court trials. Half of all real estate firms use mediation services to settle disputes (See Table III-8). Residential firms, especially the larger ones, are more likely to use these services with 64 percent of larger residential firms reporting their use of mediation services. For 71 percent of these firms, the use of mediation services is firm policy. Twenty-nine percent of firms use mediation services because of state mandates.

Property Disclosure Forms

Most state laws require real estate firms to use property disclosure forms that list known defects of the houses in their transactions and most firms report their use of such forms. The use of property disclosure forms can protect REALTORS® and real estate firms from liability that can result from defects in the properties. Most firms use the form that is developed either by themselves or by their local or state REALTOR® association (See Figure III-2, Table III-9, Figure III-3, and Table III-10).

In-house Training and Education

Education is a very important component of a real estate professional's career. Not only do brokers and salespeople take required courses to maintain their license, but REALTORS® acquire additional training to successfully compete in the today's marketplace.

More than half of real estate firms provide in-house educational training and/or educational programs for sales associates (See Figure III-4). Larger residential firms offer such classes more frequently. Most of these firms provide this training to all of their staff, as opposed to just new sales associates (See Table III-11). Furthermore, this training tends to take the form of informal sessions, as opposed to regularly scheduled formal training classes (See Table III-12).
The typical real estate firm requires 11 to 20 hours of training for its new sales associates, compared to one to ten hours of training for its experienced sales associates (See Table III-13 and Table III-14).
In additional to in-house training, many firms enlist the services of outside educators/trainers for educational training . Brokers or owners are most likely to choose the outside training sources for their firms (See Figure III-5 and Table III-15). Eighty percent of real estate firms use colleges, private education providers, motivational speakers, and other outside sources to supplement or replace in-house training. Larger residential firms are more likely to use outside sources compared to other real estate firms. Firms are more likely to reimburse agents—at least partially—for real estate sales training than to reimburse agents for college degree programs (See Table III-16, Table III-17 and Table III-18).

Personal Assistants

A third of real estate firms (or their brokers or sales associates) employ personal assistants (See Figure III-6). Personal assistants are more prevalent in residential brokerages and in larger brokerages. More than half of firms with personal assistants have set policies on their use.
Use of licensed and unlicensed personal assistants is split relatively evenly (See Figure III-7). Thirty-one percent of firms with personal assistants use only licensed personal assistants. Twenty-nine percent of firms use only unlicensed personal assistants, and 40 percent use both licensed and unlicensed personal assistants.

Community Organization Participation of Real Estate Firms

Community organization participation is a great way for real estate firms to promote their commitment to their surrounding neighborhoods. It is also one way many firms "give back" to their community.
Three quarters of real estate firms report participating in community associations (See Table III-19 andTable III-20) . Six percent report participating in the local civil rights organization, while 12 percent participate in the local fair housing group.

Firm Profitability

The strong housing market in 1998 translated in increased firm profitability (See Table III-21). Fifty-nine percent of real estate firms report that their profitability rose in 1998 compared to 1997. Sixty-one percent of residential brokerages experienced higher profitability in 1998, while 14 percent of residential brokerages indicate that their profitability diminished.

Firms in the Northeast are more likely to indicate that their profitability rose in 1998 (See Table III-22). While all firm types report stronger profitability, larger firms tend to respond that they are experiencing increased profitability. Eighty percent of larger residential brokerages report higher profitability, compared to 56 percent of smaller residential brokerages.

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Chapter 4: Real Estate Networks

Real estate networks enhance the way real estate professionals gather data on potential customers. Networks are also used to improve the flow of information enabling REALTORS® to do their job more effectively. The multiple listing service, referral networks, and relocation companies are ways REALTORS® obtain information regarding future clients.

This chapter presents the latest information regarding REALTOR® firms' association with these networks. Eighty-seven percent of firms are affiliated with at least one multiple listing service, and the typical firm with an affiliation has had an agreement with that MLS service for seven years. More than half of larger residential firms participates in affinity arrangements. The typical firm participating in affinity relationships has three affinity partners.

Multiple Listing Services

The multiple listing service (MLS) system allows real estate firms to share information on properties. This information has a major role in the ability of real estate firms to serve their customers and clients effectively with additional marketing power. A listing placed on the MLS is available to numerous other firms in the market, thereby increasing the exposure of the listing to numerous other REALTORS® and potential homebuyers.

Eighty-seven percent of real estate firms are affiliates of at least one multiple listing service (See Figure IV-1,Table IV-1 and Table IV-2). Sixteen percent of residential brokerages are members of more than one MLS. Larger firms, which tend to serve larger geographic regions, have more MLS memberships compared to smaller firms.

Most MLS affiliated firms access the MLS from office terminals. However, technology has enabled other means of access. For example, there has been an increase in access from agents' residences and via cellular phones. By making access to the MLS more flexible, real estate firms give their sales force an additional tool to find the best house for their buying customers and a better marketing tool to their listing clients.

Referral/Relocation Firms

All real estate firms look for ways to generate business. One source of business is through referrals from national referral firms and relocation firms. Other broker-to-broker referrals arise from networking activity at state and local meetings.

Twenty-eight percent of real estate firms are members of a national referral and/or relocation company (See Figure IV-2). Another 22 percent of firms are not members of such a group, but do occasionally receive business from the referral/relocation company. The larger the firm, the greater the likelihood that it will be a member of a referral or relocation company. For example, 84 percent of larger residential firms are members of these groups, compared to "just" 21 percent of smaller residential firms.
Larger real estate firms tend to maintain affiliations with referral and/or relocations networks for longer periods of time than do smaller firms (See Table IV-3). The typical firm with an affiliation has had this relationship for seven years, while affiliated larger residential firms have held such agreements for a median of ten years.

Because of reduced commission rates associated with referrals, some sales agents and brokers are turning down referrals. More than forty percent of firms report that they had brokers and/or agents who refused a referral because of the size of the commission (See Table IV-4). Residential firms with more agents are more likely to refuse referrals compared to smaller firms.

Twenty-six percent of real estate firms have a relocation department (See Figure IV-3). Nearly eighty percent of larger residential firms have a relocation department compared to 17 percent of smaller residential firms.

Affinity Relationships

Many firms are entering into arrangements with groups or corporations, in which the real estate firm will provide discounted services or additional services to the customers or members of such groups or corporations. For example, members of a fraternal group may be able to receive commission rebates from a local real estate firm. Given that it is generally the customer who receives the benefits, these "affinity" relationships are a different form of referral.

The vast majority of firms do not participate in affinity arrangements (See Table IV-5). Fourteen percent of real estate firms participate in an affinity relationship with at least one outside group or corporation. Three percent of firms do not participate because company policy prohibits such participation, while another five percent of firms operate in states that do not permit these programs.

Participation in affinity arrangements tends to be more common among larger residential firms. A third of medium sized residential firms and more than half of larger residential firms participate in affinity arrangements.

The typical firm participating in affinity relationships has such arrangements with three groups and/or corporations (See Table IV-6). The smallest affiliated firms have arrangements with a median of two groups/corporations while the largest affiliated firms have arrangements with a median of four groups/corporations.

Corporations (such as airlines, insurance companies, and membership warehouses) tend to be the most popular groups with which real estate firms establish affinity relationships (See Table IV-7). Professional associations, employers, special interests are other widely cited affinity groups.

The types of benefits in these affinity arrangements vary greatly from discounted services to access to ancillary services (See Table IV-8). Popular benefits offered to those eligible include special mortgage packages, "getting to know you" packages, a reduction in sales commission, and/or "other" goods and services.

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Chapter 5: The Role of Technology in Real Estate Firms

Technology, including the Internet, is playing an increasing role in the way real estate firms compete for and conduct business. Cellular phones and pagers have made it easier for sales agents and brokers to communicate with their clients while out of the office. Because computer usage by real estate firms is nearly 100 percent, this survey did not ask firms whether they owned/leased computers.

But as we enter the 21st century, the Internet has begun to impact the industry. Some REALTORS® see the Internet as a threat to business, while others see it as an opportunity to better attract and serve customers. In either case, this new communication technology is having profound impacts on real estate firms.

Office Technology

Communication technologies, such as cellular phones and pagers, are popular tools among real estate firms. Ninety-six percent of real estate firms use cellular phones and pagers in their business operations (See Table V-1).

Nearly a third of real estate firms or their sales forces use personal digital assistants to organize both their contact information and schedules. The penetration rates of scanners and digital cameras, both of which significantly improve a real estate firm's marketing capabilities, are at 71 percent and 59 percent of real estate firms, respectively. Penetration rates for all tools rise as firm size increases (See Table V-2).

Software Packages

Computer software contributes to the efficiency and productivity of real estate firms and allows these firms to better serve their clients. MLS, comparative market analysis, and document preparation software are the most widely cited software packages used by real estate firms.

Some software packages are geared towards special fields of the real estate industry. For example, just 47 percent of real estate firms use property management software, while 90 percent of firms that specialize in property management use such software (See Table V-3 and Table V-4).

Internet

The Internet represents a new marketing opportunity for real estate firms. A 1999 NAR study, "REALTORS® and the Internet," found that 23 percent of home searchers used the Internet in their home search. As a result, real estate firms feel that they need a presence on the World Wide Web to be competitive in today's market.

Fifty-seven percent of real estate firms have a site on the World Wide Web (See Figure V-1). Residential firms are more likely to have a Web site, with larger residential firms having a greater presence on the Internet compared to their smaller brethren .

A presence on the Internet leads to business. More than seven out of ten real estate firms report that they generate at least one percent of their business from on-line services (See Figure V-2). Larger firms are more likely to generate business from the Internet compared to smaller firms (See Table V-5).

Real estate firms also are turning to the Internet as a place to market their listings (See Figure V-3 and Table V-6). REALTOR.COM™ is the most popular site on the Internet for real estate firms to place their listings. Sixty-four percent of residential real estate firms have their listings on REALTOR.COM™. The second most popular site for on-line listings is the firm's own Web site, followed by local real estate magazine Web sites and local newspaper Web sites.

Nearly all of the larger residential firms have their listings on REALTOR®.COM™ and 80 percent of them put their listings on their company's Web site. Other third party providers, such as HomeAdvisor.com and HomeSeekers.com, lag far behind.

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Conclusion

Real estate firms take many forms and sizes. There are small firms with a sales force of one competing with firms with thousands of agents. Whereas most firms are small, REALTORS® tend to represent larger brokerages. Most real estate firms specialize in residential brokerage, other firms specialize in commercial brokerage, land sales, appraisal, or some other important facet of the real estate industry. Some firms offer a wide menu of services to their customers, while others just offer a service or two. Simply said, there is not just one type of successful real estate firm.

As there are different types of real estate firms, there are different predictions about the future of the real estate industry. Some industry "experts" predict that only larger real estate firms that offer a wide menu of services will thrive in the future, leaving no room for those firms that remain. Others feel that smaller firms will continue to prosper as long as they serve a niche market that does not interest the big conglomerates. Yet another group of experts challenges the notion that super-sized firms will compete profitably in real estate. Only a clairvoyant truly knows which scenario will happen.

Looming behind this discussion is the burgeoning role of technology, especially the Internet and the impact it is having on the real estate industry. Will the Internet enable other parties to displace the role of REALTORS® and real estate firms in the transaction? Will the Internet open new opportunities for real estate firms to compete in the future? How will the Internet change the way real estate firms conduct business and how will it impact the menu of services offered? The answers to these questions will greatly impact the type of real estate firms and their role in the future.

However, those answers are not yet obvious, and so it is important to continue tracking trends in the size of real estate firms types and their business practices. Ongoing data collection and analysis will enable firm owners and managers, and others in the real estate industry, to make informed decisions on how to successfully manage their operations in the new millennium.

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Attachment D

Real Estate Brokerage

State	Available	Subsidiary Required	Authorization	Citation
Alabama	Yes	No	Statute	5-5A-18
Alaska	No	No	Statute	AS 06.05.272(d)
Arizona	Yes	Yes	Statute	ARS 6-184(A)(7)
Arkansas	No	No	Not Authorized	NA
California	Yes	No	Statute	Cal. Corps. C. Sec. 206 and Cal. Fin. C. Sec. 751.3
Colorado	No	No	Not Authorized	N/A
Connecticut	Yes[1]	Yes[1]	See Footnote[1]	See Footnote[1]
Delaware	Yes	Yes	Statute	Title Five, Delaware Code § 761(a)(3)
DC	Yes[2]	NR	NR	NR
Florida	Yes	Yes	Statute	658.67(6), F.S.
Georgia	Yes	No	Statute & Regulation	7-1-261, operational powers of banks; Regulation 80-5-5
Guam				
Hawaii	No[3]	No	Wildcard	NR
Idaho	Yes	No	Wildcard	NR
Illinois	No	No	Not Authorized	N/A – Express prohibition exists within IL wildcard statute that grants parity with federal thrifts, among other entities
Indiana	Yes	No	Statute	I.C. 28-1-3.1
Iowa	Yes	No	Statute	Section 524.802
Kansas	No	No	Not Authorized	N/A
Kentucky	No	No	Not Authorized	N/A
Louisiana	No	No	Not Authorized	N/A
Maine	Yes[4]	No	Regulation	Maine 9B Section 131(6-A); 9B Section 446-A; Regulation #7
Maryland	No	No	Not Authorized	N/A
Massachusetts	Yes	Yes	Statute	G.L.c.167F §2 p. 25
Michigan	Yes	No	Statute	MCL 487.14104(1)
Minnesota	No	No	Statute is Silent	N/A
Mississippi	No	No	Not Authorized	N/A
Missouri	No[5]	No	Not Authorized	N/A
Montana	No	No	Not Authorized	N/A
Nebraska	Yes	No	Incidental Powers Regulation	Department Statement of Policy #9
Nevada	No	No	Not Authorized	N/A
New Hampshire	Yes[6]	No	Regulation & Wildcard	Ban 525, Federal Savings Associations Powers
New Jersey	Yes	No	Regulation	NJAC 3:11-11.5(a)(4)

Real Estate Brokerage

State	Available		Subsidiary Required		Authorization	Citation
New Mexico	Yes		No		Wildcard	58-1-54
New York	No		No		Not Authorized	N/A
North Carolina	Yes		Yes		Statute	NCGS 53-47c(3)
North Dakota	No		No		Not Authorized	N/A
Ohio	No		No		Not Authorized	N/A
Oklahoma	No		No		Not Authorized	N/A
Oregon	No		No		Not Authorized	N/A
Pennsylvania	Yes		No		Parity Statute	7P.S. §201
Puerto Rico	No		No		Not Authorized	N/A
Rhode Island	No		No		Not Authorized	N/A
South Dakota	Yes		No		Interpretation	51-A-2-14(3)
Tennessee	Yes		No		Statute, Regulation & Wildcard	T.C.A. § 45-2-607(d); Regulation Chpt. 0180-19; 45-14-105
Texas	Yes		No- Preferred		Statute	Texas Real Estate License Act
Utah	No		No		Not Authorized	N/A
Vermont	No		No		Not Authorized	N/A
Virginia	No		No		Not Authorized	N/A
Washington	Yes[7]		No		Wildcard Authority	RCW 30.04.127
West Virginia	No		No		Not Authorized	N/A
Wisconsin	Yes		No		Statute & Regulation	221.0322 & DFI -Bkg#16
Wyoming	Yes		No		Statute	W.S.13-2-101(a)(xiii) & W.S.13-2-101(a)(xii)
SUMMARY	Yes	No	Yes	No		
	26	25	6	45		

NR: Not Reported.
N/A: Not Applicable.
[1] The activity is permissible through a subsidiary. It may also be conducted directly under the authority provided by the "closely related activities" statute [Sect 36a-250(a)(40) of CT General Statutes] or "wild card" statute [Sect. 36a-250(a)(41) of the CT General Statutes]. To date, The Department has not formally acted on any request to conduct the activity.
[2] The DC Office of Banking & Financial Institutions is presently modernizing its bank, mortgage banking, trusts, savings and loan, and credit union statutes, regulations and chartering requirements.
[3] Real estate brokerage is expressly prohibited by state law, unless otherwise allowed through wildcard authority because the activity is permissible for national banks.
[4] The Department would review on a case-by-case basis and refer to Sections 416 and 419-A of the Maine Banking Statute, together with Regulation 7.
[5] Depository Trust Companies have real estate brokerage powers under 362.105

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Treasury in writing of the determination of the Board and, if the Board determines not to seek public comment on the proposal, the reasons for that determination.

"(3) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to a financial activity, the Board shall take into account—

"(A) the purposes of this Act and the Gramm-Leach-Bliley Act;

"(B) changes or reasonably expected changes in the marketplace in which financial holding companies compete;

"(C) changes or reasonably expected changes in the technology for delivering financial services; and

"(D) whether such activity is necessary or appropriate to allow a financial holding company and the affiliates of a financial holding company to—

"(i) compete effectively with any company seeking to provide financial services in the United States;

"(ii) efficiently deliver information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and

"(iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data.

"(4) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—For purposes of this subsection, the following activities shall be considered to be financial in nature:

"(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

"(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State.

"(C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

"(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

"(E) Underwriting, dealing in, or making a market in securities.

"(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of the enactment of the Gramm-Leach-Bliley Act, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

"(G) Engaging, in the United States, in any activity that—

"(i) a bank holding company may engage in outside of the United States; and "(ii) the Board has determined, under regulations prescribed or interpretations issued pursuant to subsection (c)(13) (as in effect on the day before the date of the enactment of the Gramm-Leach-Bliley Act) to be usual in connection with the transaction of banking or other financial operations abroad.

"(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls), or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

"(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;

"(ii) such shares, assets, or ownership interests are acquired and held by—

"(I) a securities affiliate or an affiliate thereof; or

"(II) an affiliate of an insurance company described in subparagraph (I)(ii) that provides investment advice to an insurance company and is registered pursuant to the Investment Advisers Act of 1940, or an affiliate of such investment adviser;

as part of a bona fide underwriting or merchant or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

"(iii) such shares, assets, or ownership interests are held for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the activities described in clause (ii); and

"(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company or entity except as may be necessary or required to obtain a reasonable return on investment upon resale or disposition.

"(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

"(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

"(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

"(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

"(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company except as may be necessary or required to obtain a reasonable return on investment.

"(5) ACTIONS REQUIRED.—

"(A) IN GENERAL.—The Board shall, by regulation or order, define, consistent with the purposes of this Act, the activities described in subparagraph (B) as financial in nature, and the extent to which such activities are financial in nature or incidental to a financial activity. Regulations.

"(B) ACTIVITIES.—The activities described in this subparagraph are as follows:

"(i) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

"(ii) Providing any device or other instrumentality for transferring money or other financial assets.

"(iii) Arranging, effecting, or facilitating financial transactions for the account of third parties.

"(6) REQUIRED NOTIFICATION.—

"(A) IN GENERAL.—A financial holding company that acquires any company or commences any activity pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired not later than 30 calendar days after commencing the activity or consummating the acquisition, as the case may be. Deadline.

"(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in subsection (j) with regard to the acquisition of a savings association, a financial holding company may commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board.

"(7) MERCHANT BANKING ACTIVITIES.—

"(A) JOINT REGULATIONS.—The Board and the Secretary of the Treasury may issue such regulations implementing paragraph (4)(H), including limitations on transactions between depository institutions and companies controlled pursuant to such paragraph, as the Board and the Secretary jointly deem appropriate to assure compliance with the purposes and prevent evasions of this Act and

Submitted Statement of Neil Milner
Chairman and CEO of
The Conference of State Bank Supervisors

Before the
Subcommittee on Financial Institutions and Consumer Credit
House Committee on Financial Services

May 2, 2001

Chairman Bachus, Representative Waters and Members of the Subcommittee, I am Neil Milner, President and CEO of the Conference of State Bank Supervisors (CSBS). CSBS is the professional association of state officials who charter, regulate and supervise the nation's nearly 7,000 state-chartered banks.

Mr. Chairman and Representative Waters, CSBS applauds your appropriate review of the implementation of the Gramm-Leach-Bliley Act (GLBA). We are submitting this statement to present our views on the Federal Reserve's and the Treasury Department's proposed rulemaking to allow Financial Holding Companies and Financial Subsidiaries to offer real estate brokerage and real estate management services.

The state bank supervisors, based on their experience in supervising institutions that have engaged in real estate brokerage, are generally supportive of the federal proposed rulemaking. Attached is our letter to the Federal Reserve and Treasury commenting on their proposal.

As you may know, presently 25 states and the District of Columbia allow their state-chartered banks to conduct real estate brokerage (see attached chart). In a number of states this activity has been allowed for ten to twenty years. In one state, North Carolina, the activity has been allowable for over one hundred years.

The states have always been permitted to authorize powers for the institutions they charter. The importance of this authority to our nation's economic development and the banking system was acknowledged in the 1991 Federal Deposit Insurance Corporation Improvement Act (FDICIA) and reaffirmed by GLBA. As detailed by both of those laws, state banks are allowed to engage in agency activities as permitted by their states and state bank supervisors, and principal activities, beyond those allowable for a national bank, are allowed with the review of the FDIC.

For years prior to the passage of GLBA, state banks conducted many non-banking or banking related activities, within the bounds of safety and soundness as determined by their state supervisors. These activities have primarily been in the area of agency and brokerage: insurance sales, sales of uninsured investment products, travel agency and real estate brokerage. While the states are often referred to as the "laboratories for innovation" for our banking system, it is the evolution of these agency and brokerage services as permissible bank activities that truly embodies this concept.

The ability for state banks to test new products, services, powers and structures on a state-by-state basis, prior to issuing a broad grant of authority to institutions nationwide, has identified best practices for the delivery of financial services that has then been available to federally chartered institutions. This has proved to be a very appropriate and effective model for protecting the safety and soundness, as well as innovation of our banking system. We believe the Federal Reserve's and Treasury's interpretation of real estate brokerage as an appropriate activity for banks is supported by the experience of the states.

Again, thank your for the opportunity to submit testimony on this important subject. We would be happy to answer any additional questions the Committee might have.

May 1, 2001

Ms. Jennifer J. Johnson
Secretary to the Board
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Real Estate Brokerage and Management Regulation
Office of Financial Institution Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Room SC 37
Washington, DC 20220

Re: Permissible Activities for Financial Holding Companies and Financial Subsidiaries: Docket No. R-1091 (66 FR 307)

Dear Ms. Johnson and Sir or Madam:

CSBS is pleased to have the opportunity to respond to the Board of Governors of the Federal Reserve System's ("Board's") and the Secretary of the Treasury's ("Treasury's") proposal[1] seeking comment on whether to determine that real estate brokerage and real estate management are activities that are financial in nature or incidental to a financial activity pursuant to Section 103(a) of the Gramm-Leach Bliley Act ("GLBA").[2] CSBS is the national organization of state officials responsible for chartering, regulating and supervising the nation's 6,868 state-chartered commercial and savings banks and 419 state-licensed branches and agencies of foreign banks.

State Regulator Perspective

The real estate market comprises a broad range of activities such as real estate financing, appraisal, escrow and settlement services, and is a familiar environment for banks of all charter types. However, the Board and Treasury proposal specifically highlights the perspective of the state banking system because some states currently permit their state-chartered banks to engage in real estate brokerage or management activities. For

[1] 66 Fed. Reg. 307-314, (Jan. 3, 2001).
[2] Pub. L. 106-102, 113 Stat. 1338 (Nov. 12, 1999).

example, at least 26 states permit their state-chartered banks to engage in real estate brokerage activities.

The state perspective on real estate brokerage activities is particularly germane because of the many years such activities have been permissible. In at least one state, it has been a permissible activity for more than a century. Notwithstanding its permissibility however, relatively few institutions are actively engaged in real estate brokerage. Furthermore, it is telling that state bank supervisors have not encountered any significant safety and soundness concerns with respect to the manner in which institutions are conducting these activities.

Based on this experience, we generally support a determination by the Board and Treasury that would consider real estate brokerage and real estate management activities to be financial in nature or incidental to a financial activity. We qualify this support, however, with the stipulation that such activities should be conducted pursuant to applicable state laws and prudential operational safeguards. In this context, we believe that consumers will ultimately benefit from enhanced competition derived from additional providers in real estate services.

Consumer Protection
We commend the Board and Treasury for diligently exploring the potential consumer protection issues raised by permitting banks to engage in real estate brokerage and management activities. For example, the Board and Treasury solicit comment on whether to establish specific restrictions on transactions or relationships between a real estate broker and its affiliated depository institution.[3] The states that permit state-chartered banks to conduct such activities have not encountered patterns of consumer abuse in this area.

Conclusion
Based on the experience of states that permit real estate brokerage and management activities, we believe that it is appropriate for the activities discussed in the Board and Treasury's proposal to be considered financial in nature or incidental to a financial activity,[4] so long as they are conducted pursuant to applicable state laws and prudential operational safeguards. Thank you for this opportunity to comment. Please call on us if you have any questions or if we can provide additional assistance.

Best Personal Regards,

Neil Milner
President and CEO

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[3] 66 Fed. Reg. 310, (Jan. 3, 2001).
[4] As those terms are defined in Section 103(a) of the GLBA.

Real Estate Brokerage

State	Available	Subsidiary Required	Authorization	Citation
Alabama	Yes	No	Statute	5-5A-18
Alaska	No	No	Statute	AS 06.05.272(d)
Arizona	Yes	Yes	Statute	ARS 6-184(A)(7)
Arkansas	No	No	Not Authorized	NA
California	Yes	No	Statute	Cal. Corps. C. Sec. 206 and Cal. Fin. C. Sec. 751.3
Colorado	No	No	Not Authorized	N/A
Connecticut	Yes[1]	Yes[1]	See Footnote[1]	See Footnote[1]
Delaware	Yes	Yes	Statute	Title Five, Delaware Code § 761(a)(3)
DC	Yes[2]	NR	NR	NR
Florida	Yes	Yes	Statute	658.67(6), F.S.
Georgia	Yes	No	Statute & Regulation	7-1-261, operational powers of banks; Regulation 80-5-5
Guam				
Hawaii	No[3]	No	Wildcard	NR
Idaho	Yes	No	Wildcard	NR
Illinois	No	No	Not Authorized	N/A – Express prohibition exists within IL wildcard statute that grants parity with federal thrifts, among other entities
Indiana	Yes	No	Statute	I.C. 28-1-3.1
Iowa	Yes	No	Statute	Section 524.802
Kansas	No	No	Not Authorized	N/A
Kentucky	No	No	Not Authorized	N/A
Louisiana	No	No	Not Authorized	N/A
Maine	Yes[4]	No	Regulation	Maine 9B Section 131(6-A); 9B Section 446-A; Regulation #7
Maryland	No	No	Not Authorized	N/A
Massachusetts	Yes	Yes	Statute	G.L.c.167F §2 p. 25
Michigan	Yes	No	Statute	MCL 487.14104(1)
Minnesota	No	No	Statute is Silent	N/A
Mississippi	No	No	Not Authorized	N/A
Missouri	No[5]	No	Not Authorized	N/A
Montana	No	No	Not Authorized	N/A
Nebraska	Yes	No	Incidental Powers Regulation	Department Statement of Policy #9
Nevada	No	No	Not Authorized	N/A
New Hampshire	Yes[6]	No	Regulation & Wildcard	Ban 525, Federal Savings Associations Powers
New Jersey	Yes	No	Regulation	NJAC 3:11-11.5(c)(4)

Real Estate Brokerage

State	Available		Subsidiary Required		Authorization	Citation
New Mexico	Yes		No		Wildcard	58-1-54
New York	No		No		Not Authorized	N/A
North Carolina	Yes		Yes		Statute	NCGS 53-47c(3)
North Dakota	No		No		Not Authorized	N/A
Ohio	No		No		Not Authorized	N/A
Oklahoma	No		No		Not Authorized	N/A
Oregon	No		No		Not Authorized	N/A
Pennsylvania	Yes		No		Parity Statute	7P.S. §201
Puerto Rico	No		No		Not Authorized	N/A
Rhode Island	No		No		Not Authorized	N/A
South Dakota	Yes		No		Interpretation	51-A-2-14(3)
Tennessee	Yes		No		Statute, Regulation & Wildcard	T.C.A. § 45-2-607(d); Regulation Chpt. 0180-19; 45-14-105
Texas	Yes		No- Preferred		Statute	Texas Real Estate License Act
Utah	No		No		Not Authorized	N/A
Vermont	No		No		Not Authorized	N/A
Virginia	No		No		Not Authorized	N/A
Washington	Yes[7]		No		Wildcard Authority	RCW 30.04.127
West Virginia	No		No		Not Authorized	N/A
Wisconsin	Yes		No		Statute & Regulation	221.0322 & DFI -Bkg#16
Wyoming	Yes		No		Statute	W.S.13-2-101(c)(xiii) & W.S.13-2-101(a)(xii)
SUMMARY	Yes	No	Yes	No		
	26	25	6	45		

NR: Not Reported.
N/A: Not Applicable.

[1] The activity is permissible through a subsidiary. It may also be conducted directly under the authority provided by the "closely related activities" statute [Sect 36a-250(a)(40) of CT General Statutes] or "wild card" statute [Sect. 36a-250(a)(41) of the CT General Statutes]. To date, The Department has not formally acted on any request to conduct the activity.

[2] The DC Office of Banking & Financial Institutions is presently modernizing its bank, mortgage banking, trusts, savings and loan, and credit union statutes, regulations and chartering requirements.

[3] Real estate brokerage is expressly prohibited by state law, unless otherwise allowed through wildcard authority because the activity is permissible for national banks.

[4] The Department would review on a case-by-case basis and refer to Sections 416 and 419-A of the Maine Banking Statute, together with Regulation 7.

[5] Depository Trust Companies have real estate brokerage powers under 362.105